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Canada
RESTRICTIVE TRADE PRACTICES COMMISSION

[11] *11* REPORT

Concerning the Distribution and Sale of Electrical
Construction Materials and Equipment
in Ontario

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DEPARTMENT OF JUSTICE
OTTAWA

§

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1959

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RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT



CONCERNING THE DISTRIBUTION AND SALE OF
ELECTRICAL CONSTRUCTION MATERIALS AND
EQUIPMENT IN ONTARIO

COMBINES INVESTIGATION ACT

Ottawa
1959

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RESTRICTIVE TRADE PRACTICES COMMISSION

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.
Chairman

A. S. Whiteley, B.A., M.A.
Member

RESTRICTIVE TRADE PRACTICES COMMISSION

OTTAWA

May 1, 1959

Honourable E. Davie Fulton, P.C., Q.C., M.P.,
Minister of Justice,
Ottawa.

Sir:

I have the honour to submit to you herewith the report of the Restrictive Trade Practices Commission dealing with the distribution and sale of electrical construction materials and equipment in Ontario.

The matter was brought before the Commission by the submission of a statement of the evidence obtained in the inquiry by the Director of Investigation and Research under the Combines Investigation Act and has been dealt with in accordance with Sections 18 and 19 of the Act.

Evidence and argument in regard to the Statement of Evidence were heard by the Commission in Toronto on April 10th, 1958. In these proceedings Mr. S. F. Sommerfeld appeared on behalf of the Director of Investigation and Research and Messrs. Walter B. Williston, Q.C. and R. H. Rohmer appeared on behalf of Electrical Contractors Association of Ontario and Messrs. Clarence W. Dent, Donald M. Brown, Frank J. Dahmer and Hugh J. McDonald.

Yours faithfully,

(Sgd.) C. Rhodes Smith

C. Rhodes Smith
Chairman

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CHAPTER I

INTRODUCTION

1. Reference to the Commission

Under date of the 14th day of January, 1958, the Director of Investigation and Research under the Combines Investigation Act, submitted to the Commission a Statement of the Evidence which he had obtained in an inquiry conducted by him. At the same time the Director submitted copies of the Statement of Evidence to the several parties against whom allegations were made therein.

2. Allegations

The general allegations contained in the Statement of Evidence are as follows:

"3. The evidence indicates that a combination exists or is being formed in the distribution and sale of electrical construction materials and equipment, having or designed to have the effect of:

- (a) Limiting facilities for supplying such articles or commodities;
- (b) Fixing common prices, mark-ups or charges for the supply of such articles or commodities;
- (c) Enhancing the price or cost of such articles or commodities;
- (d) Preventing or lessening competition in and substantially controlling within the Province of Ontario, and in particular within the Toronto area, the purchase, sale and supply of such articles or commodities;

which combination operates and is likely to operate to the detriment or against the interest of the public.

4. The evidence also indicates that the Electrical Contractors Association of Ontario, by reason of its activities

and their effects, both present and potential, as described in this Statement, constitutes the combination referred to in paragraph 3 hereof, and that the following persons are those that have been principally concerned in devising and carrying out such activities on behalf of the said Association:

Clarence W. Dent,	Past President of the Electrical Contractors Association of Ontario and Chairman of the Membership and Registration Committee of the Electrical Contractors Association of Ontario;
Donald M. Brown,	President of Zone 20, Electrical Contractors Association of Ontario;
Frank J. Dahmer,	Past President of Zone 20, Electrical Contractors Association of Ontario;
Hugh J. McDonald,	Chairman of the Business Practices Committee, both of Zone 20 of the Electrical Contractors Association of Ontario and of the Electrical Contractors Association of Ontario.

5. The evidence also indicates that the persons and corporations mentioned in paragraph 4 hereof have been parties to agreements or arrangements:

- (a) To limit unduly the facilities for the supply of electrical construction materials and equipment;
- (b) To enhance unreasonably the prices of electrical construction materials and equipment;
- (c) To prevent or lessen unduly competition in the purchase, sale and supply of electrical construction materials and equipment."

The Statement of Evidence particularizes the allegations under the following headings:

- A. Supplier Relations Program
- B. Restrictions on Entry
- C. Business Practices
- D. Public Detriment

the allegations under these headings being set forth as follows:

"A. Supplier Relations Program

190. In establishing and carrying out the Supplier Relations Program, the Electrical Contractors Association of Ontario is and has been a party to a scheme designed to channel all sales of electrical construction materials and equipment through the electrical contractor making the installation (with the exception of material specified by the Association as previously noted herein) and to ensure that the contractor derives a profit from the sale of the materials and equipment whether he is the supplier or not. The plan is also designed to prevent sales of electrical materials and equipment at wholesale prices to persons not approved by the Association as electrical contractors. The scheme is to be enforced through a collective boycott or threatened boycott by electrical contractors of wholesalers and manufacturers who refuse to sell only to electrical contractors or to supply a commission to the contractor, and by refusing to bid on jobs where materials and equipment are to be supplied by the owner unless a commission thereon is paid to the contractor. . . . At least in the Toronto area (Zone 20), in the Kingston area (Zone 12), in the Galt area (Zone 42), and in the Sudbury area (Zone 4), an additional method of enforcement is available in the so-called 'materials clause' in Clause 3 of the Collective Bargaining Agreement entered into between electrical contractors and the International Brotherhood of Electrical Workers. There is nothing in evidence, however, concerning the operation of the agreement in the Kingston, Galt or Sudbury areas."

"B. Restrictions on Entry

202. (i) Union Agreement

The evidence indicates that the Association exercises considerable influence upon the International Brotherhood of Electrical Workers in determining who shall be entitled to hire members of the Union. Clause 3(c) of the 1956 agreement between electrical contractors in the Toronto area and Local 353 of the IBEW provided that the Union would not sign an agreement with anyone, other than a party whose work is recognized as electrical construction work (Exhibit 26, Serial 421). . . . It is obvious, however, that the Union has no interest in restricting the number of firms with which it is able to conclude satisfactory Collective Bargaining Agreements, and the evidence shows that, in practice, it is the Association that must be satisfied and

not the Union. The policy of the Association has been and is to limit competition from large construction and engineering firms by preventing them from carrying out electrical construction work even when such work is an integral part of their operation. While Clause 3(c) of the Union agreement affords some colour of excuse for the actions of the Association, it is obvious that it is self-induced and that it has been applied arbitrarily by the Association so as to restrict competition. . . .

203. The purpose and effect of the Association's influence over the supply of labour are to limit competition in the electrical construction field. Such influence can also assist in enforcement of the Supplier Relations Program by refusing sanction to any firm installing materials not supplied by the contractor.

204. (ii) Membership and Registration

The evidence indicates that the Association regards membership, and, to some extent, registration by the Association under local By-laws pursuant to the Municipal Act, as a means of controlling entry to the trade and thereby limiting competition. . . . The evidence in this case seems clear that the intention of the Association in promoting the plan was directly related to the enforcement of the Supplier Relations Program.

(a) There can be no objection, of course, to a number of individuals grouping themselves together to achieve a legislative program [in this case amendment of the Municipal Act and of Municipal By-laws], but there is objection if, as in this case, they combine to use the legislative provisions they obtain for purposes beyond those intended by the legislature and to restrict competition unduly.

. . ."

"C. Business Practices

205. The evidence indicates that the aim of the Business Practices Committee is to establish a uniform method or system for calculating quotations for the supply and installation of electrical construction materials and equipment. To the extent that the system is adopted and used by members of the Association and others, it will tend to eliminate competition among them. Having regard to the general objects of the Association, there appears to be substantial danger that such a system will result in public detriment by depriving

the public of the benefit of fully competitive bids or quotations. . . .

"D. Public Detriment

206. Public detriment, as a result of the arrangements and practices described herein, is alleged in the following respects:

(a) The general effect of the arrangements and practices is to limit competition in the supply of electrical construction materials and equipment by requiring that such materials and equipment be purchased through the electrical contractor making the installation or that he receive a commission in respect thereof, and by restricting recognition, as an electrical contractor, to firms having the approval of the Association. Not only is this detrimental to the public upon general grounds, but also the evidence indicates individual instances where specific detriment has occurred. . . .

(b) The ultimate effect of the Supplier Relations Program must be to enhance the cost of electrical construction materials and equipment since compliance with the scheme requires that, except for those types of material hereinbefore specified, the installing contractor shall receive a commission on the sale, unless he is the actual supplier and able to charge his own mark-up. Where the customer may choose to buy materials direct, whether for reasons of economy, service or otherwise, the price that he pays will reflect an unearned increment for the contractor.

(c) The price schedules being devised by the Business Practices Committee will also tend to limit competition among the electrical contractors and will tend further to deprive the public of freely competitive bids."

3. Hearings and Witnesses

During the course of the inquiry conducted by the Director, the following witnesses were examined before Mr. A. S. Whiteley, Member of the Restrictive Trade Practices Commission, these witnesses being examined on the 17th day of June, 1957, at Montreal:

A. T. Muir, Vice-President of G. M. Gest Limited;

Thomas Gallagher, Vice-President of Construction of
G. M. Gest Limited.

On the following day, June 18th, at Toronto, the following persons were examined before Mr. A. S. Whiteley:

George E. Temple, Vice-President and General Manager of Catalytic Construction of Canada, Limited;

H. R. McClymont, General Manager and Chief Engineer of York Township Hydro System;

H. L. Somerville, Mill Supply Purchasing Agent, Orenda Engines Limited;

N. L. Anderson, Ontario Division Manager, G. M. Gest Limited.

On July 2nd and 3rd, 1957, at Toronto, the following persons were examined before Mr. C. Rhodes Smith, Chairman of the Commission:

K. H. Smith, Manager Zone 20, Electrical Contractors Association of Ontario;

William G. Booth, Secretary-Manager of the Electrical Contractors Association of Ontario;

Kenneth N. Rumble, Proprietor of K. N. Rumble Electrical Contractors and Secretary of Zone 20, Electrical Contractors Association of Ontario;

Donald M. Brown, President, Industrial Electrical Contractors Limited and President of Zone 20, Electrical Contractors Association of Ontario;

Clarence W. Dent, Vice-President and General Manager, Roxborough Electric Limited, Past President of the Electrical Contractors Association of Ontario and Chairman of the Membership and Registration Committee of the Electrical Contractors Association of Ontario;

Frank J. Dahmer, President and General Manager, Ontario Electrical Construction Company Limited, and Past President Zone 20, Electrical Contractors Association of Ontario;

Hugh J. McDonald, President, Black & McDonald Limited and Chairman of the Business Practices Committee both of Zone 20 of the Electrical Contractors Association of Ontario and of the Electrical Contractors Association of Ontario.

On receipt of the Statement of Evidence the Commission, in accordance with the provisions of Section 18 of the Combines Investigation Act, fixed Tuesday, the 8th day of April, 1958, at the hour of 10 o'clock in the forenoon, in Room 708 Post Office Building, Station "Q", 25 St. Clair Avenue East, in the City of Toronto, in the Province of Ontario, as the date, time and place at which argument in support of the Statement of Evidence might be submitted by or on behalf of the Director of Investigation and Research and at which persons against whom allegations had been made in the Statement would be allowed full opportunity to be heard in person or by counsel. At the request of counsel for the parties, the date was subsequently changed to Thursday, the 10th day of April, 1958, on which date the hearing took place before the Chairman of the Commission and Mr. A. S. Whiteley, Member of the Commission.

At the hearing the following appearances were entered:

Mr. S. F. Sommerfeld	For the Director of Investigation and Research
Mr. Walter B. Williston, Q.C.	For the parties against whom
Mr. R. H. Rohmer	allegations were made, namely, Electrical Contractors Association of Ontario; Clarence W. Dent; Donald M. Brown; Frank J. Dahmer and Hugh J. McDonald.

No witnesses were examined at the hearing before the Commission.

4. Position Taken by the Parties Against Whom
Allegations Are Made in the Statement
of Evidence

Prior to the hearing the Commission, in accordance with its usual practice, had notified the parties that at the opening of the hearing they would be required to state the position which was being taken by them or on their behalf with respect to the facts alleged by the Statement of Evidence and with respect to the conclusions drawn therefrom by the Director. At the opening of the hearing counsel for the parties stated that he had specific objections to the Statement of Evidence, which were set out in a written submission.

The full position of the parties as set out in counsel's brief may be stated as follows:

- (a) There is no agreement to limit unduly the facilities for the supply of electrical construction materials and equipment or any article whatsoever;
- (b) The evidence does not justify the conclusion that the respondents have been parties to agreements or arrangements to enhance unreasonably the price of electrical contractors materials and equipment. The assumption of the Director is that the price to the consumer has been unreasonably enhanced by the fact that the Electrical Contractors Association of Ontario may have attempted to provide that the electrical contractor making the installation is the purchaser of the equipment installed. It is respectfully submitted that this assumption is incorrect and is not supported by the evidence;
- (c) There is no evidence of any fixing of common prices, mark-ups or charges for the supply of any articles or commodities;
- (d) The evidence does not indicate an agreement to prevent or lessen unduly competition in the purchase and sale of electrical construction material and equipment;
- (e) It is in the public interest that there should be an association such as the Electrical Contractors Association of Ontario for the following reasons:
 - (i) There has been no attempt to keep duly qualified persons from becoming members of the Association.
 - (ii) The Association attempts to ensure that work will be done by duly-qualified and experienced persons and not by irresponsible or part-time operators.
 - (iii) Membership in the Association promotes the proper apprenticeship and training of men.
 - (iv) Standards set by the Association will be more uniform and effective than if left to local licensing.
- (f) No objection can be taken to the fact that the Association made representation for the purpose of having legislation enacted. Nor is there anything wrong in the Association attempting to have such legislation implemented by By-law

and thereafter translated into action as contemplated by the legislation. It is unique, at least, to suggest that the legislation was to the public detriment.

- (g) No objection can be taken to Section 3(b) of the Trade Union Agreement. [Prior to 1956 paragraph (b) of Section 3 of the Union Agreement read as follows: "No member of the Union shall be permitted to work at Electrical Construction Work for anyone who is not a party to this Agreement." In the Agreement made in 1956 the following words were added thereto: "nor shall members of the union install material or equipment unless supplied by the company". In 1957, after the beginning of the inquiry, the words "unless by mutual agreement" were added at the end of the paragraph]. This Agreement is within Section 410 of the Criminal Code. It is to be noted that the clause does not purport to prevent members of the union from installing material or equipment for anyone other than the "Company". The clause is quite inoffensive. The "Company" can itself make the decision as to what material the workmen will install. The contract does not purport to regulate the supply of material in respect of any contract to which the "Company" is not a party.
- (h) The organization does not create a monopoly for the sale of supplies or equipment. It does not fix a common price for work and material. It does not induce dealers to sell only to members of the organization.
- (i) Specific objection will be taken to certain of the numbered paragraphs in the Statement of Evidence as not being entirely accurate or as needing some qualification.
- (j) It is also pointed out that the Statement of Evidence contains many references to proposals or discussions which were either rejected or never implemented.
- (k) The respondents do not agree in any way with the summary and conclusions of the Director. Without limiting the generality of the foregoing, specific reference will be made to the following paragraphs: 190, 202, 203, 204, 205 and 206
- (l) Almost all of the complaints of the Director are against the actions, resolutions, correspondence and expressions of intentions of members of the Executive Council of Zone 20. The actions of Zone 20, however, cannot be attributed to the Association. The Association is not

responsible for the actions or intentions of the various Zones. Each Zone has autonomy to run its own affairs, e.g., the Association never at any time authorized or approved the Union Contract. It might be pointed out that Zone 20 is not a legal entity.

- (m) It is respectfully submitted that taking the work of the organization as a whole, it has acted in the public interest rather than to the detriment of the public. There may have been occasional transgressions, but the fact that a policy can sometimes be abused or even that it has been in a few instances, does not prove that there was a combine or a breach of the Criminal Code.

During the course of the inquiry the Director obtained a number of documents from the premises occupied by the Electrical Contractors Association of Ontario, also from the premises occupied by Zone 20 of the Electrical Contractors Association of Ontario and from premises occupied by several companies and firms, who or whose officers were actively interested by membership in the Association. Code letters were placed on all of these documents to indicate the premises from which they were taken. Serial numbers were also placed upon the documents running from 1 to 1,505, both inclusive, and including numbers 435A, 843A, 946A and 964A. The documents were all verified by affidavits which were filed as exhibits in the inquiry. Certain other documents were filed as exhibits during the taking of evidence before Mr. Whiteley and the Chairman and during the hearing before the Commission. The exhibits filed during the taking of evidence are numbered 1 to 45 inclusive, and those filed at the Commission hearing are numbered H-1 and H-2.

For convenience, when any of the foregoing documents are referred to in this report, they will be identified by their exhibit number or by the serial number, or by both exhibit number and serial number. Whenever reference is made to the transcript of the evidence of any witnesses who appeared before Mr. Whiteley or the Chairman it will be done as follows: (Evidence, p. ...). If reference is made to the transcript of the hearing before the Commission it will be done as follows: (Hearing, p. ...).

CHAPTER II

THE ELECTRICAL CONSTRUCTION MATERIALS AND EQUIPMENT INDUSTRY

1. Nature of the Industry

This inquiry is concerned with electrical contractors and the supplying of electrical construction materials and equipment in the Province of Ontario. The term "electrical construction materials and equipment" includes everything that an electrical contractor may be called upon to install in the ordinary course of his business. The Statement of Evidence gives the following description of what is included in the term:

"Such installations include the construction of a system of electrical circuits in a building, their connection with the source of power, and the incorporation of all necessary equipment in connection therewith, such as switching equipment, outlet boxes, panel boards, etc., and involve the use of items such as wire and cable, conduit, fittings, sockets, etc. Such installations also include from time to time transformers, motors, generators and other items of equipment that utilize electrical power and require the service of a skilled electrician. The electrical contractor also normally installs the lighting fixtures in a building. A directory of catalogues, described as 'The electrical construction industry's guide to materials and equipment' appeared in 'Electrical Contractor of Canada' for July 1957. The directory listed over 300 items under twenty categories."

The particular instances of electrical contracts referred to in the Statement of Evidence and in this report were severally concerned with fixtures, transformers, wiring materials, floodlighting equipment and switching equipment.

Electrical contractors may purchase materials and equipment directly from the manufacturer, or they may purchase from a wholesaler of electrical construction materials and equipment. Several types of retail stores also handle many small items of electrical equipment, e.g., hardware stores, electric shops, specialty stores, and mail order houses.

While the Statement of Evidence states that there is little

statistical evidence available of the size of the industry or the value of its product, it is clear that the industry taken as a whole, including both the materials and equipment supplied and the work of installation, must be regarded as quite substantial. For example, the Statement of Evidence contains the following information in this connection:

"In 1956, the Dominion Bureau of Statistics reported that 238 electrical firms in Canada did work to the value of \$110,780,537. These firms all did business in excess of \$200,000. However, there may well have been other firms with sales in excess of \$200,000, and there is, of course, a large number of small firms in the industry. As of January 1, 1957, the Electrical Contractors Association of Ontario had 817 members. At the same time, it was estimated that there were 1800 electrical contractors in the Province of Ontario (Exhibit 31, page 2)."

Counsel for the Association submitted that even this figure of 1,800 does not take into consideration other persons who do electrical contracting work in conjunction with the businesses of heating, plumbing and tinsmithing (Hearing, p. 48).

2. Electrical Contractors Association of Ontario

A return of information made on behalf of the Electrical Contractors Association of Ontario and filed as Exhibit 31 contains the following particulars, inter alia:

Electrical Contractors Association of Ontario (in this report generally referred to as the Association) has its Head Office at Guelph, Ontario. It was incorporated under the laws of Ontario by Letters Patent dated the 1st day of November, 1948. Supplementary Letters Patent extending the objects of the Association were issued under date the 29th of April, 1954.

The original purposes and objects of the Association are set out in Article 2 of a document dated November 1st, 1948, and entitled "Constitution and By-Laws of the Electrical Contractors Association of Ontario", which document was filed as Schedule "B" to Exhibit 31. These purposes and objects read, in part, as follows:

"(a) TO promote the consideration and discussion of all questions affecting the electrical trade and all ancillary and allied trades;

(b) TO promote improvements in the law affecting the

electrical trade;

(c) TO diffuse among the members of the Corporation information on all matters affecting the electrical trade, and to print, publish, issue and circulate such papers, periodicals, books, circulars and other literary undertakings as may seem conducive to any of these objects;

(d) TO improve the technical and general knowledge of persons engaged in, or about to engage in, the electrical trade or in any employment, manual or otherwise in connection therewith and, with a view thereto, to provide for the delivery of lectures and the holding of classes;

(e) TO arrange and promote the adoption of equitable forms of contracts and other documents used in the said trades, and to encourage the settlement of disputes by arbitration, and to act as or nominate arbitrators and umpires on such terms and in such cases as may seem expedient;

. . .

(h) TO do all such other lawful things as are incidental or conducive to the attainment of the above objects or any of them."

Revised By-laws of the Association (Schedule "C" to Exhibit 31) were enacted on the 12th day of February, 1954, By-law 29 of the revision authorizing the Association to make application for Supplementary Letters Patent extending the objects of the Association by adding thereto the following clauses:

"To establish standards of qualification for electricians who are members of, or associate themselves with the Corporation.

To establish or arrange courses of instruction, examinations and a system of registration and certification of electricians in different grades and classes for members of the Corporation, and others who may desire and apply for the same.

To enter into arrangements with any association, trade union, municipal corporation or other persons or corporation with [which] may be conducive to the attainment of the objects of the Corporation."

Geographically, the Association is divided into nine regions, corresponding to the regions into which the Province is divided under the regulations of the Hydro Electric Power Commission of Ontario relating to inspection of electrical installations. These regions are subdivided into zones totalling 52 in all, numbered 1 to 53 but omitting number 13.

The Executive Officers of the Association are a President, First Vice-President, Second Vice-President and Treasurer. There is also a paid Secretary-Manager.

The Board of Directors consists of the officers of the Association, the immediate Past President, one Director from each of the nine regions, and the Chairman of the Master's Central Examining Board.

The By-laws require each Zone to have elected officers and the great majority have such officers. Seven Zones had no elected officers at the date of the return of information (Exhibit 31), but had appointed key men. Two or three Zones had no elected officers or key men at that date.

There are ten standing committees of the Association, according to Exhibit 31, including committees on Business Practices, Membership-Registration, Supplier Relations and Labour Relations. The composition of these committees, as determined at the 1957 Annual Meeting of the Association, is set out in Schedule "A" to Exhibit 31.

A. Relationship of a Zone, Particularly Zone 20, to the Association

Counsel for the parties against whom allegations are made in the Statement of Evidence contended that the Association is not responsible for the actions or intentions of the various Zones and that each Zone has autonomy to run its own affairs. He further submitted that there was very little evidence against the Association as such, but that most of the matters complained of related solely to activities of Zone 20, its officers and directors, with which the Association as a whole had nothing to do. It is therefore a matter of some importance in this inquiry to establish the actual relationship between the Association and the Zones.

To begin with, the original "Constitution and By-Laws" of the Association contemplated Local Zones, and contained detailed suggested By-laws for them. Articles 1 to 3 of these suggested By-laws read:

"ARTICLE 1.

These groups shall be known as Local Zones and shall form units of the Electrical Contractors' Association of Ontario.

ARTICLE 2

Objectives

The objectives of these zones shall be:

(a) To conform to and assist in attaining the objective outlined in the Constitution of the Electrical Contractors' Association of Ontario.

(b) To effect an interchange of methods of practice within the Association for the benefit of the members thereof.

(c) To discuss and support any movement which will tend to improve the status of the Electrical Contractor in his own community.

ARTICLE 3

Membership

Membership of these Zones shall consist of bona-fide Contractors as outlined in Article 3, Section (f) of the Constitution of the Electrical Contractors' Association of Ontario, and who are members in good standing of Electrical Contractors' Association of Ontario."

The By-laws were completely revised in February, 1954. Revised By-laws were again enacted in April, 1956 and again in March, 1957. In all three revisions By-laws 16 and 17 lay down rules concerning Zones. In so far as the relationship between the Association and the Zones is concerned the rules in the three revisions are identical in their effect, to all intents and purposes. In the last revision, that of March 30, 1957, the two By-laws read as follows:

- "16. (a) For the better carrying out of the objects of the Association its Members shall be grouped geographically into local administrative units or branches known as Zones, the grouping or boundaries of such Zones to be those of the 52 existing Zones, subject to such change as may be approved from time to time by the Board of Directors and the establishment of new Zones and disestablishment of Zones as hereinafter provided.

- (b) Zone Members. The membership of a Zone shall be those Members of the Association who are from time to time on the books of the Zone and shall be limited as nearly as possible to Members who have their usual residence or place of business or work within the boundaries of the Zone. Transfer from one Zone to another upon change of residence or place of business or work may be affected [sic] upon the consent of the Executive Committee of the Zones concerned and upon adjustment of Zone fees as may be arranged. No Member shall be a member of more than one Zone at a time, 'unless such member is regularly engaged in the business of making electrical installations in more than one Zone, in which case such member may be a member in the Zones in which he is so engaged in business'.
- (c) Establishment of New Zones. The Board of Directors may establish new Zones from time to time and in so doing may transfer territory and members from established Zones to the new Zones and convene and supervise the organization meeting.
- (d) Dis-establishment of Zones. The existence of a Zone may be terminated at a general meeting of the Members of the Association, the notice of which shows the proposed action. If a Zone is disestablished or requests that it be disestablished or ceases to function for one year as a Zone, the Board of Directors shall wind up its affairs and arrange transfer of its members.
- (e) Each Zone shall have at least the following:
 - (i) Elected Officers: A President, Vice-President and Secretary-Treasurer (who shall be bonded by fidelity bond) with the powers and duties usual to such offices and elected annually by the members and each of such officers must be a Contractor Member or a duly accredited representative of a Contractor Member.
 - (ii) A Zone Representative elected at the annual meeting of the Zone Members until the next annual meeting, but subject to recall at any general meeting of the Zone Members, provided that any vacancy in this office may be filled for the unexpired time by the Zone

Executive Committee.

- (iii) A Zone Executive Committee consisting at least of the elected officers of the Zone and the Zone Representatives.
- (iv) An annual meeting of the Members of the Zone at which the elected officers of the Zone shall be elected by ballot and held not later than one week before the Annual Meeting of the Members of the Association.
- (v) Regular meetings of the members of the Zone held weekly, monthly or at such other intervals as the members may decide from time to time.
- (f) Except as otherwise provided in the By-laws, each Zone may adopt such constitution, provide for such committees, make such regulations, levy and collect such annual dues or assessments of the Zone (additional to the Association Fees) and govern its affairs and proceedings as the Zone members may determine, provided that a copy of any constitutional provision and general regulation and particulars of any annual dues levied shall be given forthwith to the Association and shall be subject to disallowance in whole or in part within 60 days after receipt thereof.
- (g) It shall be the duty of the Secretary-Treasurer of a Zone to receive and collect the Annual Fees of the Association from the Members who are on the books of the Zone, as well as any annual dues levied by the Zone.
- (h) Annual dues or assessment levied by the Zone for its local purpose shall be separately deposited in a chartered bank and shall be under sole jurisdiction of the Zone, but any balance thereof unexpended after the dis-establishment or other termination of a Zone shall be general funds of the Association.

ASSOCIATION FUNDS

17. (a) Deposit-Zone Account. All fees or other money of the Association received by a Zone shall be deposited separately in an account in a chartered bank in the name Electrical Contractors' Association

of Ontario Zone (number) Account and particulars of such deposits shall be given by the Secretary-Treasurer of the Zone or by the Bank to the Treasurer or Secretary-Manager of the Association for deposit from time to time as the latter may require.

- (b) Transfer of Funds. All such fees (and other money, if any) of the Association shall be transferred by the Zone to the Association from time to time within 30 days of receipt of the same by the Zone."

From these By-laws there can be no doubt that the Zones are subordinate units of the Association. They are established by the Association "for the better carrying out of the objects of the Association" and the Association may terminate their existence. They have general authority to govern their affairs and proceedings as their members may determine, but surely such authority is to be exercised in furtherance of, or at least not in conflict with, the purpose for which they have been established, viz., the better carrying out of the objects of the Association. The Association has a high degree of control in three important matters, in that it may disallow in whole or in part any constitutional provision or any general regulation enacted by a Zone or any annual dues levied by a Zone.

Some confirmation of the relationship between the Association and the Zones is found in a letter dated June 20, 1956, written by Mr. K. H. Smith, Manager of Zone 20 to R. M. Way & Co. Ltd., which refers to:

"Mr. C. W. Dent, President of the Electrical Contractors Association of Ontario as a whole and Mr. Frank J. Dahmer, President of the Association's Toronto area organization, Zone 20, . . ."

(Exhibit 29, Serial 759)

Zone 20, the Toronto area, is probably the most highly organized of all the Zones. Mr. K. H. Smith, Manager of Zone 20, stated that he thought Zone 20 was the only one that had a paid, permanent staff (Evidence p. 78). This Zone enacted detailed Zone By-laws on November 8, 1955, and Mr. Smith stated that "it operates pretty well on its own" (Evidence p. 79). His recollection was that the Zone By-laws were approved by the Association, but he could not give the date of such approval.

The By-laws of Zone 20 (see Exhibit 25, Serials 1208 to 1213) state that they were passed pursuant to Clause (f) of By-law 16 of the Association. The membership provision is as follows:

" ARTICLE II Membership

Members shall be those members in good standing of the Electrical Contractors Association of Ontario who have a permanently established place of business in the area designated by the Association from time to time as Zone 20, or who may be assigned by the Association to the Zone."

(Serial 1208)

Article IV consists of ten clauses setting out the objects of the Zone. In our opinion none of the provisions in these clauses can be considered to be in any way in conflict with the purposes and objects of the Association. Clause (10) makes the intention in this respect clear. It reads:

"(10) To increase and stabilize the membership of the Electrical Contractors Association of Ontario and conduct all its activities in accord with the Constitution and By-Laws of that Association."

(Serial 1209)

Article XIII provides for 12 standing committees, including committees on Membership, Codes and Standards, Jobber Relations and Labour Relations (Serial 1212). Committees on Business Practices and Bidding Procedure were later established.

In the oral evidence there is some confusion about membership in a Zone in relation to membership in the Association. Mr. W. G. Booth, Secretary-Manager of the Association gave evidence as follows:

"Q. Is it possible to be a member of a zone without also being a member of the Electrical Contractors Association of Ontario?

A. Yes. It is actually through the zone that we gain our provincial membership. So he would first be actually a member of a zone.

Q. If any contractor is a member of a zone, what subsequent steps are necessary on his part in order to become a member of the Electrical Contractors Association of Ontario?

A. Usually when a person is a member of a zone, his

application for membership is forwarded on to head office with the approval of that zone president and secretary."

(Evidence, pp. 135 - 6)

And again:

"Q. As to the zones, is it necessary that a person or a company, to be a member of a zone, must be a member of the Electrical Contractors Association of Ontario?

A. No; I know in many instances where members are not members of E.C.A. of Ontario, but they are actually attending zone meetings."

(Evidence, p. 149)

And again:

"Q. Then, in answer to another question by my learned friend, you said to the following effect: individuals attend zone meetings without being members of the E.C.A. of Ontario. By that did you mean that they were members of local organizations, distinct from E.C.A. as a whole?

A. Not necessarily, no. It could be that they had no affiliation with E.C.A. or with the local. They do not attend or retain membership. There has never been anything that each contractor has ever been, so to speak, held from. And the only way to gain membership is by letting them know the path that you wish to take for the furtherance and the betterment of the industry as a whole.

Q. Is it usual for a person to be a member of a zone without being a member of E.C.A., as well?

A. No, there are not too many of them. The majority, after becoming acquainted with the Association and the working of it, apply for membership in the provincial organization."

(Evidence, pp. 151 - 2)

Mr. Booth's evidence of Zone membership separate and distinct from Association membership is clearly in conflict with the By-laws of both the Association and Zone 20. The only basis given

in his evidence for the existence of such separate Zone membership is the fact that some persons who were not members of the Association had attended Zone meetings. It may be that Mr. Booth was confusing attendance at one or more meetings with actual membership.

The evidence of Mr. K. H. Smith, Manager of Zone 20, is quite definite and is in agreement with the By-laws. He said:

- "A. . . . Perhaps I might add that, in any case, the final membership is accepted by the Association as a whole, not by the zone.
- Q. However, membership is organized by zones, is it not?
- A. Yes, but to the best of my knowledge there is no such thing as a member of a zone, apart from membership in the Association."

(Evidence, pp. 101 - 2)

The Commission is of the opinion that while non-members have apparently attended Zone meetings they were not and could not be Zone members and that the true position is as stated in the By-laws and by Mr. K. H. Smith.

The facts that Zones are subordinate units of the Association and that a member of a Zone must be a member of the Association will not of themselves render the Association responsible for things done by Zone members at or as a result of Zone meetings. It will therefore be necessary to examine this question further in connection with the specific activities objected to by the Statement of Evidence. At this point it may be noted that at least in recent years four members of Zone 20 have been quite prominent in Zone 20 and three of them also in the Association. The following information concerning these four members is derived partly from their own oral evidence and partly from the Minutes of Zone 20 (Exhibit 41).

<u>Name</u>	<u>Position held</u>
Clarence W. Dent	President of Zone 20 from February, 1954 to the end of 1955, First Vice-President of the Association in 1955, President of the Association from April, 1956 until March, 1957, Chairman of Membership and E. C. A. Registration Committee of Zone 20 from January, 1956 till date of the inquiry, Chairman of Membership and Registration

Committee of the Association from March, 1957 to date of the inquiry,

Mr. Dent stated in evidence, when asked concerning his attendance at a general meeting of Zone 20, that he did not miss a meeting for several years (Evidence, p. 190). He also stated, with reference to February, 1956: ". . . let us say that I was the work-horse of practically every activity of the zone at that time" (Evidence, p. 199).

Donald M. Brown	Second Vice-President of Zone 20 in 1955, Vice-President of Zone 20 in 1956, Also Chairman of Zone 20 Jobber Relations Committee in 1956 (Serial 63), President of Zone 20 since beginning of 1957, Chairman of the Supplier Relations Com- mittee of the Association for about a year following its formation, May 17, 1956 (Evidence, pp. 158-9; Serials 1069- 70);
Hugh John McDonald	Chairman of Business Practices Committee of Zone 20 from June, 1956 to date of the inquiry, Chairman of Business Practices Committee of the Association from April, 1957 to date of the inquiry (Evidence, pp. 243-4);
Franklin J. Dahmer	Chairman of Labour Relations Committee of Zone 20 in 1955 and 1956, and a member of the Association's Labour Relations Committee in 1956-1957. President of Zone 20 in 1956. Chairman of Bidding Procedure Committee of Zone 20 in 1957.

The importance of the positions held by these gentlemen in relation to the matters alleged in the Statement of Evidence, and particularly the fact that in some periods each of the first three named has held office in both the Association and Zone 20 at the same time, have some significance in determining whether things done at meetings of Zone 20 or by officers of Zone 20 were done independently of the Association or for the purpose of carrying out Association policy, with the knowledge and approval of the Association.

B. Membership of the Association

In the sworn return of information made by the Association to the Director (Exhibit 31), a breakdown of Association member-

ship by Zones is given, as of January 1, 1957. At that date the Association had a total of 817 registered members out of a total number of electrical contractors in Ontario estimated by the Association as approximately 1,800. The return also stated that 331 electrical contractors who had formerly been members were no longer registered members because their fees had not been kept up to date. A breakdown of those whose membership had lapsed shows that they had been members of many different Zones but none of them had been members of Zone 20, the Toronto area (Exhibit 31, Schedules "G" and "H").

While some 331 memberships have apparently lapsed over the years, the current registered membership has been increasing in recent years. Thus, C. W. Dent, in a letter dated February 1, 1955, gave the number as over 400. On August 25, 1955 W. G. Booth, in a letter, gave it as 550. On May 31, 1956, in a letter, C. W. Dent stated that the Association represented nearly 700 of the leading electrical contractors in all parts of Ontario. And on September 10, 1956 C. W. Dent's membership report gave the number as well over 700 and growing every day.

CHAPTER III

ACTIVITIES OF THE ASSOCIATION AND ITS MEMBERS

The specific activities objected to in the Statement of Evidence are set out in Chapter I of this report. They fall under the following headings:

1. Supplier Relations Program
2. Restrictions on Entry
 - A. Union Agreement
 - B. Membership and Registration
3. Business Practices.

We shall look at the evidence concerning each of these in turn.

The evidence relating to the Supplier Relations Program will be set out under the following sub-headings:

- A. Development of the Program
- B. Effectiveness of the Program
 - (a) Methods Contemplated to Make It Effective
 - (i) Collective Boycott
 - (ii) Union Agreement
 - (b) Application of the Program in Specific Cases.

1. Supplier Relations Program

A. Development of the Program

The Electrical Contractors Association of Ontario has for years taken the position that the contractor who installs electrical equipment and materials should also be the supplier of the equipment and materials. In other words, on this basis, such equipment and materials should not be sold by the manufacturer or distributor direct-

ly to the owner or user of the premises on which the installation is to be made, but only through the electrical contractor. Since the contractor normally buys at the wholesale or "trade" price and charges the employer for whom he is performing the contract a "retail" price, the adoption of the Association's contention by manufacturers and distributors would be financially beneficial to the contractor.

At least as early as 1953 the Association had a committee called the Jobber Relations and Material Supply Committee, of which Mr. Roland DeMers was named Chairman on May 6 of that year (Exhibit 25, Serial 917). Mr. DeMers was also President of the Association in 1955. Some attempt was made in 1953 to establish co-operative arrangements with the Canadian Electrical Manufacturers Association and with the Canadian Electrical Distributors Association, sometimes referred to as C.E.D.A. However, nothing of significance to this inquiry developed until 1955.

In 1955 the situation developed as follows:

At an Executive Committee meeting of the Association on May 16, complaints received from Zone 18 (Peterborough and Area) and Zone 34 (Sarnia) were discussed. These were to the effect that maintenance men employed by Canadian General Electric Company were buying material from the Employees' Cash Sales Store, and using it to do electrical contracting work after their usual working hours. On motion, the Association Secretary was instructed to write to Mr. H. M. Turner, President of Canadian General Electric, requesting that the matter be investigated and rectified immediately (Exhibit 25, Serials 945-6). At the next Executive meeting on June 19th the Secretary, Mr. Booth, advised that he had written Mr. Turner in regard to the two complaints (Exhibit 25, Serial 983).

Subsequently two letters from Canadian General Electric, dated July 18 and August 5, 1955, were received in reply to Mr. Booth's letter, dealing respectively with the Peterborough and Sarnia complaints. In each the company stated it was anxious to co-operate with the Association in every possible way. The letter of August 5 stated that the reason for the Sarnia complaint was that the company had been selling to a building contractor there named Goroll, at trade prices, Goroll having an electrician on his staff competent to do the wiring on his projects. The writer felt the real problem was that Sarnia had no By-law requiring the licensing of electrical contractors. Such a By-law would make it easy to determine who should qualify for trade prices. The letter ended:

"Most certainly, if we discontinue selling to Goroll, he will be able to buy his requirements from other jobbers."

(Exhibit 25, Serial 984)

At the June 19th meeting Mr. Booth reported a further complaint, this time that a distributor from Kitchener was selling materials to a person who was otherwise steadily employed by a firm in Georgetown. A motion was then passed that "the subject of arranging a meeting with C.E.D.A. to rectify these situations receive further consideration at the next Executive Meeting" (Exhibit 25, Serial 953).

At an Executive Committee meeting a month later, July 18, another complaint was raised. The relevant portion of the minutes reads as follows:

"Mr. Grieve, Director of Region 8, stated that members of his Zone learned that the wholesale G.E. Warehouse in New Liskeard was selling direct to the customer. They requested names of all persons purchasing materials within the past 60 days, checked off names of those who were not electrical contractors and advised G.E. that if such persons were allowed to make further purchases, the contractors themselves would not buy from G.E. He continued that at his last Zone meeting it was moved that a letter be forwarded to all wholesalers in the district signed by all members attending this evening's meeting. See Appendix 'G'.

Mr. J. B. Ferguson, Secretary of Zone 31, pointed out that such a plan would only be effective if adopted by all Zones in the area.

Mr. Dent stated that this should definitely be an Association project, and remarked that part of our aim is to get an agreement with C.E.D.A. on an Association level and eventually have an agreement between the Canadian Electrical Contractors Association and C.E.D.A. to the effect that wholesalers will only sell to contractors. This will take time, he commented, but meanwhile the situation can be handled through Zone activity.

Mr. DeMers advised that at the next Board of Directors Meeting it would be recommended that this be adopted as Association policy.

Mr. Grieve remarked that while distributors might not worry too much about losing the business of 4 or 5 Northern Ontario Zones, they would think twice about such unethical practices if the 50 Zones throughout the Province stood behind such policy and boycotted these distributors."

The Appendix "G" to the minutes mentioned in the foregoing extract reads as follows:

"Letter Directed to Distributors by Zone 31, Kirkland Lake.

Gentlemen:

This Association has been studying for some time a problem which concerns us as Electrical Contractors and you as Electrical Wholesalers.

Some firms operating in this area have been making a practice of wholesaling to any persons who would buy materials from them.

Most of our Electrical Wholesalers adhere strictly to mutual agreements, a code of ethics which has been set up over the years.

Surely we as Contractors are indeed foolish to support a wholesaler whose ethics are sub-standard and who is, in effect, in competition with us.

This Association has moved that firms engaged in Electrical Wholesaling in this area be asked to adopt a code of ethics as follows:

Sales be restricted to--

1. recognized electrical retail outlets.
2. firms employing a recognized full time maintenance electrician purchasing material for their own use.
3. Electrical Contractors who are registered and bonded under the By-laws of the Electrical Contractors Association of Ontario, and that Members of this Association be notified of this code; and that a prominent sign be placed above the entrance or on the of firms engaged in Electrical wholesaling -- sign to read -- 'Wholesale to the Electrical Trade Only.'

We ask that you consider the adoption of this code of ethics if you are not already using a similar code.

Please notify us of intentions of agreement or non-

agreement by (date to be set.)

President

Secretary

Members

.Zone

Name

Address "

(Exhibit 25, Serial 971)

Correspondence dated subsequent to the meeting July 18, 1955, together with items in the minutes of later meetings, show that the Association sought to arrange a meeting between officers of the Association and the Directors of the Eastern Region of C.E.D.A., that a number of meetings were held, at which the Association endeavoured to make an agreement with C.E.D.A. No copy of the brief setting out the proposals made by the Association is in evidence, but there is in evidence a letter dated February 9, 1956, from Mr. C. W. Dent, then First Vice-President of the Association, to Mr. Don Brown, Chairman of the Jobber Relations Committee of Zone 20. The letter reads as follows:

"The following is my recollection of the brief I wrote for presentation to our last meeting with the executive of C.E.D.A.

1. That the members of C.E.D.A. agree to sell electrical supplies at wholesale prices to electrical contractors only, except as noted below
2. That the electrical contractor members of E.C.A. agree to purchase their electrical supplies from only jobbers who are a party to this agreement.
3. That industrial and commercial establishments, maintaining a full time bona fide electrical maintenance department be excluded from item 1.
4. That should a jobber have occasion to quote prices directly to a consumer, he should quote retail prices and credit the difference between the retail and wholesale price to the installing contractors account.
5. That the jobber advise all such purchasers (in item 4) that it would be to his best interest to purchase the material through his electrical contractor.

6. That the electrical contractor should refrain from advising any client to purchase the material that he would be called on to install.
7. That a list be prepared of special material that may be purchased directly from the manufacturer, ie custom built switchboards, high tension switching equipment, transformers, etc.

This was not intended to be the final agreement, but was for preliminary discussion. It may be revised or reworded as deemed advisable by the committee.

I had a talk with Norman Franks C.E.D.A.'s manager a few days ago at another meeting, as to whether he had any further advice from his association re this proposed agreement and he advised that it had been discussed but no firm instructions had been given him. He is going to try and get his committee together to meet with us again shortly and will let us know when."

(Exhibit 30, Serials 24-5)

In view of Mr. Dent's position, his authorship of the brief, and his participation in the meeting with C.E.D.A., the Commission accepts this letter as setting out quite accurately the nature of the agreement sought by the Association. Other items in the correspondence and minutes of meetings confirm this view.

The meetings and discussions took place over a period of about six months, beginning in November 1955. If an agreement with C.E.D.A. as a whole should not be feasible it was suggested that an agreement might be made separately with each distributor member of C.E.D.A. In the end, on the advice of counsel for the Association, it was felt that an agreement of the kind sought would be illegal, and the proposal was dropped.

This was not the end of the matter, however. Apparently it was immediately decided to make an approach to each individual supplier.

On April 17, 1956, Mr. C. W. Dent, who had become President of the Association at its Annual Meeting a few days earlier, wrote to Mr. Don Brown, Chairman of the Jobber Relations Committee of Zone 20, as follows:

"Following numerous discussions with suppliers and contractors during the convention, I think we should go ahead and get our policy into working form as soon as possible now

I am suggesting a procedure something as follows:

1. That a meeting be arranged between our committee and our solicitor to finalize a letter to the individual suppliers,
2. That this letter when approved be sent to all suppliers including C.E.D.A. members, C.G.E., Westinghouse and Northern,
3. As soon as replies are received from the majority, we prepare a list of those favorable and send to our members,
4. That we arrange for lists of our members for each suppliers [sic], who gave a favorable answer,
5. That we write a letter of instructions for release to our members of the part they will be expected to take.

I propose to select a chairman for each of the standing committees of the Ontario Association this month and being as the work on the Jobber Relations Committee is exactly parallel to the Zone 20 Committee to which you were appointed chairman, I would like to ask you to be chairman of the Provincial Committee as well.

Please let me know if you would accept this appointment."

(Exhibit 30, Serials 63-4)

The minutes of a Board of Directors' meeting on May 17, 1956 contain the following paragraphs:

"Jobber Relations

Mr. Dent stated that it has long been an opinion of contractors that one of the biggest gripes in our trade was the jobber selling below our prices, and we have had meetings with C.E.D.A. to correct this, and suggested to them to have their members follow rules, and we would also adhere to them. Our Legal Advisor had advised against such,

as he felt that we were playing with fire. We, therefore, asked if it would be in order to ask our members to provide us with information on this, and then write to these supply houses and ask as to their reasoning in this matter, we could then write to our members not to buy from the people whom we believe are inconsiderate to the contractor, and while we might have quite a fight on our hands, it will eventually straighten itself out. Mr. Dent then read a draft letter for this purpose, and while this letter would not state that we would not buy from such supply houses, we hope that this deduction would be taken.

Mr. Dent proposed the following members for Jobber Relations Committee:

Mr. Donald Brown - Chairman - Zone 20	
Mr. Osman Ellis	46
Mr. Joseph Morand	38
Mr. Thomas G. Murray	12
Mr. R. B. Wade	36
Mr. Robert Lemmon	17
Mr. Mel Wittig	16
Mr. M. Kelly	24
Mr. L. A. Legault	28
Mr. Murray Pollock	18

Mr. W. D. Higgon moved the acceptance of this committee. Seconded by Mr. A. R. Forth. Carried.

Mr. Dent requested the approval of the draft letter. He stated that this letter was the result of six meetings, and that every angle had been discussed, this was the result.

'The members of our Association have requested that this letter be written to you requesting you to give them a statement of your individual sales policy.

As you know, our members have long favoured those suppliers whose sales policies provide that the Electrical Contractor should receive a commission on all electrical materials and equipment that he is called on to install in the course of his service to the public. In this connection, we define an Electrical Contractor as a person who maintains a regular place of business and who earns his livelihood from the making of electrical installations. We do not consider a journeyman electrician to be in this category.

A number of suppliers have already handed us statements of their sales policies to the effect that they will sell electrical wiring supplies and equipment at the wholesale or trade price to qualified Electrical Contractors only, with the exception, of course, that such sales will be made to an industrial or commercial establishment which employs a full time maintenance staff operating under an annual inspection permit issued by the Ontario Hydro Inspection Department.

If you are prepared to give our members a statement of your sales policy, we would appreciate some reference therein to the following questions:

- (a) Does your firm sell materials at wholesale prices to Electrical Contractors only (with the exception of industrial and commercial establishments as above described);
- (b) If you sell directly to the ultimate consumer, do you pay a commission to the Electrical Contractor who makes the installation;
- (c) As a matter of practice, do you advise those purchasers of material who are not Electrical Contractors (or an industrial establishment) that they should purchase the required materials through the Contractor who is to make the installation.

Your statement of sales policy, when received will be distributed among all our members for their information. If you require clarification of the contents of this letter, please contact D. M. Brown [Brown] at Toronto, RUssell [RUssell] 1-5241, or by letter through the Association. '

Mr. Forth moved the acceptance of this letter. Seconded by Mr. Evans. Carried.

We will make available to each Supply House, whose policy we agree with, a list of our members for their guidance, and my suggestion is also that as soon as we get the letter off to the jobbers, that we refer our attention to the manufacturers along the same lines."

(Exhibit 25, Serials 1069-70)

It may be noted here that the Commission has seen no evidence of any significant developments between the Association and the Canadian Electrical Manufacturers Association.

A few days later, on May 22, 1956, Mr. Dent wrote to the Secretary, Mr. Booth, stating that he thought a letter should be written to all members of the Jobber Relations Committee somewhat as follows:

"During the past six (6) months the Executive Committee have been trying to find a basis for some agreement with the jobbers to sell material wholesale only to electrical contractors, or if they do sell direct to our customers that they would retain a commission for the contractor. It was found that such an agreement would be illegal and it was therefore decided to ask each individual supplier to write us a letter stating their sales policy. The committee will be charged with studying these letters when received and preparing a list of those jobbers or suppliers whose sales policy corresponds with the views of the Association.

This list will then be sent to all of our members asking their support in making this policy effective. The suggested policy is to confine our purchases of electrical materials to those suppliers who have a sales policy in keeping [with] what the Association believes it should be.

After this list has been prepared and sent to our members it will be necessary to set up local committees to keep in close touch with developments, and these local committees should promptly advise the Chairman of the provincial committee of any cases where the suppliers fail to comply with their own stated sales policy, so that appropriate steps may be taken to correct the situation.

It should be stated that our own members have a serious responsibility in implementing such a plan and should not misuse it in anyway, because such things are difficult to obtain and can only be kept in effect if every one lives up to few simple rules and that they should not give these benefits away to anyone.

A copy of the letter sent to the suppliers is attached herewith, and you will be kept advised of developments promptly."

It appears that at the time of the Board of Directors' meeting of May 17, 1956 the Jobber Relations Program indicated in the foregoing paragraphs was already being applied by at least some of the Association's members. The minutes of that meeting record the following:

"Mr. Dent suggested Mr. Frank J. Dahmer, Mr. F. C. Ainsworth, Mr. W. J. McDonald, and Mr. Arthur Rushforth as a committee for Business Practices, with Mr. Frank J. Dahmer as Chairman.

Mr. Dent stated that these gentlemen are refusing to bid where the manufacturers are supplying the materials. We are going to have to hurt somebody's feelings in order for them to see that we will not tolerate these practices, if we do not appoint someone here, Zone 20 could handle it.

Mr. Forth asked if this was to be provincial policy, and he was informed that it was."

(Exhibit 25, Serial 1068)

Very shortly after the May 17th meeting the name of the Jobber Relations Committee was changed to that of the Supplier Relations Committee.

Subsequent steps in the development of the Supplier Relations Program of the Association are not in dispute. They are fully described in the Statement of Evidence, in the following paragraphs:

"43. On May 30, 1956, a mimeographed copy of the letter to suppliers, as approved at the Board of Directors' meeting of May 17, 1956, was sent to 120 jobbers and manufacturers in Toronto and to eighty-one others outside of Toronto (Exhibit 25, Serials 1310 - 1324).

44. As replies were received from suppliers, the plan was to circulate these replies to the members of the Supplier Relations Committee and issue bulletins from time to time to the membership of the Association summarizing the result of the questionnaires and indicating which suppliers had shown agreement with the Association policy and which had not. On June 20, 1956, C. W. Dent wrote to Don Brown as follows:

'With reference to the letters being received from the suppliers in reply to our letter requesting their stated sales policy, Bill Booth will have copies mimeographed

and mailed to all members of the committee, to assist them in coming to decisions with regard to them.

It is suggested that we wait a few days more to see if we can get statements from more of the major suppliers before issuing our first bulletin. Northern Electric promised Frank Dahmer that they would write a new letter. Mr. Harris of C.G.E. says that he did not receive our letter yet so we had another copy sent to him personally from Guelph. I think his answer will be favorable.

Attached is a suggested bulletin #1 and 2 to be sent to the members of your committee as a first step to get the members doing something and test how much may be expected from them by mail. You are free of course to write these letters yourself in your own words rather than those I used.

It is of course necessary to secure the approval of the committee members on these bulletins before releasing them to Bill Booth to be mimeographed and mailed to the members.

. . . '

(Exhibit 30, Serial 160)
(See Serials 161 to 163 for
suggested Bulletins 1 and 2)

45. The minutes of the Executive Committee meeting of the Association held June 18, 1956, contain the following report:

' . . . The Supplier Relations Committee is well organized, a letter has been forwarded to Suppliers on statement of policy, and while we have not received sufficient replies for a bulletin. As soon as we receive others, we will have it in the mail, and will ask our members to show these to representatives of the suppliers, and tell them that if their name is not on this list, we will act in accordance.

. . . '

(Exhibit 29, Serial 754)

46. By the end of July, 1956, five bulletins had been prepared for release to members of the Association. On July 31, 1956, C. W. Dent wrote to W. G. Booth forwarding copies

of the bulletins for circulation, together with the suggested letter to go to members of the Supplier Relations Committee (Exhibit 25, Serials 1376-1377). Apparently, however, the bulletins were sent only to the members of the Supplier Relations Committee at that time and it was not until September of 1956 that the bulletins were circulated to the membership generally. On September 5, 1956, C. W. Dent wrote to Don Brown, attaching copies of bulletins 1, 2, 3, 4 and 5, advising that he had instructed the Guelph office to release the bulletins for mailing to all members as quickly as possible (Exhibit 30, Serial 228).

47. On September 7, 1956, bulletins 1 to 5, both inclusive, were sent out to all Electrical Contractors Association members with a covering letter over the signature of C. W. Dent (Exhibit 27, Serial 1477). The covering letter read as follows:

'TO: ALL E.C.A. MEMBERS.

Attached is Bulletins #1, 2, 3, 4, and 5 from the Supplier Relations Committee which you will readily see required an enormous amount of work on your behalf, to secure a better deal for the Electrical Contractors on material that we are called on to install in our services to the public.

You are now asked to do your part on putting these recommendations into effect and you can rest assured that the eyes of the entire manufacturing and supply industries will be on us, to see if we can or will measure up to our responsibilities and do our share in making these policies effective.

So this what we want you to do:

1. Study the recommended policy thoroughly, and make this policy your own policy.
2. Particularly study paragraphs 6 and 7 in Bulletin #2.
3. Appoint a Supplier Relations Committee in your own Zone to meet and plan how to make this report effective in your Zone. Report at once any infractions of the policy to the Provincial Committee Chairman, Don Brown, 1207 Roselawn Ave., Toronto or Telephone RUssel [RUssell] 1-5241. Fast action is

important.

4. When reporting infractions, it is important to report the full facts, the name of the Jobber, Dates and material supplied. If possible, secure the Shipping Bill.
5. It is illegal for us to ask you to withhold purchases from any suppliers whose name is not on the preferred list, but we can advise you of the names of those suppliers that do not have a Sales policy that corresponds to the Association Policy. The rest is up to you, how you use the information.
6. Let your Committee Chairman know how this policy is working out in your Zone. This is the only way the Committee can gather information for the improvement of this Association Policy.'

(Exhibit 27, Serial 1477)

48. Bulletin No. 1 reads as follows:

'The following is the sales policy that your committee recommends should be the sales policy of whole-sale jobbers and suppliers, selling supplies to bona-fide electrical contractors, to secure the support of E.C.A. of Ontario members.

1. That the jobber should sell materials at whole-sale prices to Electrical Contractors only, or to industrial or commercial establishments who employ an electrical maintenance staff on a full time basis, and who have an annual inspection permit from the H.E.P.C.
2. That if the jobber finds it necessary to sell materials direct to the ultimate user that a commission should be kept in the price structure for the Electrical Contractor who makes the installation and provides the primary guarantee, and that this commission should be credited to the contractors account when the jobber is advised who the installing contractor is.
3. That the jobber should, in the best interests of the industry, advise anyone who makes enquiries re the purchase of material and who is not a contractor or industrial establishment who employs a

full time maintenance staff, that they be advised that they should purchase the said materials through their Electrical Contractor who is to install the material.

That the Electrical Contractor should in turn purchase all materials and supplies possibly [possible] from the jobber who has established a sales policy substantially as suggested above.

Further bulletins will be issued from time to time as further information is available and you are urged to keep these bulletins in a separate file for ready reference. This Bulletin will be a key to future Bulletins. '

(Exhibit 27, Serial 1478)

49. Bulletin No. 2 reported that letters had been sent out to suppliers and jobbers and a copy of that letter was attached as bulletin 2(a) (Exhibit 27, Serial 1480). The significant paragraphs of bulletin No. 2 are as follows:

' . . .

3. The replies are graded in 3 categories A, B, C to correspond to the number of the questions as on the letter to the suppliers. In most cases where there is neither a yes or no, it indicates that these companies did not express an opinion on the specific question, which the Committee will try to clarify in time for the next Bulletin.
4. It is recommended that your Zone appoint a Zone Supplier Relations Committee at once to study the recommendations of your provincial committee and to recommend to the Zone members ways and means of making this policy effective in your Zone.
5. It is suggested that non-members in your jurisdiction, as well as your own members, be requested to support this recommended policy, as the support of every contractor is needed to make this very desirable plan effective. It is expected that this policy will help our members to not only secure a better profit for the material he sells, but to channel the supply of much more of the material through the bona-fide Electrical Contractors.

. . .

8. If you do not see your favourite Jobbers name on this list, call him up and ask him or his representative to explain why they refused or neglected to write us a letter setting out their sales policy, as we can only assume if they did not consider this important enough to answer, that they are opposed to our Policy. Ask him why? They could be named on our next Bulletin if they subscribe to our Policy.'

(Exhibit 27, Serial 1479)

50. Bulletin No. 3 sets out a tabulation of the answers to the three questions asked in the letter of May 30, 1956, as given by the thirty-one suppliers that had then replied to the letter. It will be recalled that the three questions asked were:

' . . . '

- (a) Does your firm sell materials at wholesale prices to Electrical Contractors only (with the exception of industrial and commercial establishments as above described);
- (b) If you sell directly to the ultimate consumer, do you pay a commission to the Electrical Contractor who makes the installation;
- (c) As a matter of practice, do you advise those purchasers of material who are not Electrical Contractors (or an industrial establishment) that they should purchase the required materials through the Contractor who is to make the installation.

. . . '

(Exhibit 27, Serial 1480)

Thirty of the thirty-one that replied answered 'Yes' to the first question, eighteen replied 'Yes' to the second question, and eleven replied 'Yes' to the third question. No 'Noes' were recorded. Bulletin No. 4 listed seven jobbers about which it made the following statement:

'The following recognized Jobbers have ignored our request for a statement of their Sales Policy, and it is assumed that they are not in accord with the Association Policy:

. . . '

(Exhibit 27, Serial 1482)

At the bottom of this bulletin, the following note appears:

'(There may be others - See Bulletin #3)'

(Exhibit 27, Serial 1482)

51. Bulletin No. 5 lists 117 suppliers that had not replied to the letter requesting a statement of sales policy. The bulletin stated:

' . . . We believe a large number of firms are manufacturers who sell only through recognized Jobbers, but it is still recommended that you ask any of their representatives with whom you come in contact with, why they did not take the trouble to answer our letter: . . . '

(Exhibit 27, Serials 1483-1485)

52. Drafts of bulletins Nos. 6 and 7 are in evidence although there is no record of completed bulletins bearing these numbers. Bulletin No. 6 listed twenty-seven suppliers stating that these had answered the letter since the issuance of bulletin No. 3 and that they had stated that they supplied their products only through accredited distributors or jobbers. Otherwise, they indicated approval of Association policy (Exhibit 30, Serial 274; Exhibit 25, Serial 1432). A further draft of bulletin No. 6 related to studies being made by officers of the Association with a view to naming the amount of commission that should be retained for the installing contractor where the material was sold direct and not through the contractor (Exhibit 25, Serial 1430). The draft of bulletin No. 7 listed classes of material which Association members should not insist upon supplying. These are as follows:

' . . . '

1. Starters or controls that are "included in the contract" of a member of the National Association of Master Plumbers and Heating Contractors. (This will be the subject of a later meeting with Consulting Engineers).
2. Starters or other material that is part of a package unit assembled and tested at the Manufacturers plant (ie. - a package air conditioning unit or oil burner package unit).
3. Special scientific equipment sold as part of a process-

ing assembly.

4. Material on which it is determined that a supplier has retained a commission for the installing contractor.
5. Special materials manufactured by a Company and supplied for installation in a building being built or altered for their own use, providing that a list of the material and their value is included with any tender calls for their installation, so that the Contractor can add his mark up for his services.

. . . .'

(Exhibit 30, Serial 273)

The evidence indicates, however, that bulletin No. 8 was issued, dated October 22, 1956, listing eighty-eight suppliers that had not at that date replied to the letter requesting a statement of sales' policy (Exhibit 25, Serial 1434).

53. On October 2, 1956, D. M. Brown had written to W. G. Booth suggesting that the 'Supplier and Manufacturer list be reviewed and amended to date and reissued to all members' and 'that 2nd letter be sent to Suppliers and Manufacturers, giving them a nudge to get their statement of policy to us, this only to those of course who did not answer our first letter' (Exhibit 26, Serial 464). On October 22, 1956, a follow-up letter was sent out over the signature of W. G. Booth which read, in part, as follows:

'Our records indicate that we have received no response to our request for a statement of your individual sales policy.

E.C.A. Members prefer to deal with suppliers who see that the Electrical Contractor receives commission on all electrical materials and equipment he installs. An Electrical Contractor is one who maintains a regular place of business and earns his livelihood by making electrical installations. Journeymen Electricians are not in this category.

Numerous suppliers have advised us that they will sell electrical material and equipment at wholesale or trade prices only to qualified Electrical Contractors, with the exception of industrial or commercial establishments employing full-time maintenance staffs operating under an annual inspection permit issued by the H.E.P.C.

Inspection Dept.

As we would like to remove your name from our next Bulletin re Supplier Relations, which is directed to all our members, your early reply to the following queries would be greatly appreciated:

. . . '

(Exhibit 30, Serial 279)

The letter then went on to ask the three questions that had been contained in the original letter of May 30, 1956 (Exhibit 25, Serial 1069).

54. C. W. Dent had also prepared a bulletin which had been revised by the Board of Directors of Zone 20 of the Association and proposed as a statement of Association policy on the supply of materials by the owner rather than by the electrical contractor. It was forwarded to W. G. Booth for circulation to the Executive Committee, the Board of Directors and the Supplier Relations Committee and was eventually adopted at a meeting of the Executive Committee of the Association held on July 17, 1956 (Exhibit 25, Serial 1087). A printed copy of the bulletin is entered as Exhibit 42. On August 8, 1956, it was sent out to members of the Association in Ontario with a covering letter over the signature of C. W. Dent. The letter states that the bulletin has been approved by a majority vote of the Board of Directors and is now sent out as a statement of policy for the members. The letter reads in part as follows:

' . . .

3. Take this seriously, because we want our 700-odd contractor-members to talk and support a common policy. The combined effect should channel many thousands of dollars of material sales through the electrical contractor. If you need help to convince a reluctant customer, ask for it and we will do our best to assist you. That is what an association is for "to accomplish collectively those things that we cannot do by ourselves."

. . . '

(Exhibit 30, Serial 214)

The letter also sets out a list of materials which the contractor should not insist on supplying:

' . . .

1. Where starters or controls are "included in the contract" of a member of the National Association of Master Plumbers and Heating Contractors. (This will be the subject of a later meeting with Consulting Engineers)
2. Where the starter or other material is part of a package unit assembled and tested at the Manufacturers plant (i.e. - a package air condition unit or oil burner package unit)
3. Special scientific equipment sold as part of a processing assembly.
4. Material on which it is determined that a supplier has retained a commission for the installing contractor.

. . . '

(Exhibit 30, Serial 215)

55. It would appear that the purpose of the bulletin was to promote the idea of the Supplier Relations Program with the suppliers and customers of the electrical contractors. Essentially it consists of the arguments advanced by the contractors for being the sole suppliers of electrical materials and suggests how customers may find themselves in difficulties if they do not adhere to the Association's policies. These two suggestions are as follows:

' . . .

(8) LABOR

There is an increasing reluctance on the part of organized labor to sanction the installation of materials by their members, that is not supplied by the Electrical Contractor, as all of the above items when not looked after skilfully and efficiently reflects on the journeyman electricians by increasing the cost of the work performed by them. For this reason, in some areas the union agreement states that the union members shall not install material unless supplied by the Electrical Contractor or employer.

. . .

(10) INSPECTION AND APPROVAL

. . .

Many of the leading Electrical Contractors are now confining their operations to the Projects in which the supply of the Electrical wiring material and equipment is included in the electrical contract, and it may well be that you would be depriving your organization of the possible services, equipment, skills gained from many years in electrical construction work.

. . . '

(Exhibit 42, pages 1-2)

56. Early in September of 1956, a bulletin headed 'Material Supply Procedure' was sent out to the members of Zone 20 over the signature of H. J. McDonald. The evidence indicates that C. W. Dent had originally proposed the bulletin but that it had been revised slightly before being sent out. On August 29, 1956, H. J. McDonald wrote a letter to K. H. Smith, the Manager of Zone 20, enclosing a copy of the bulletin and also a copy of another bulletin dealing with Business Practices Committee matters and suggesting a meeting of the Business Practices Committee for Wednesday, August 29 (Exhibit 29, Serial 821). There is also evidence that F. J. Dahmer of Ontario Electrical Construction Company, Limited, and the then President of Zone 20, also received a copy of the letter and the draft bulletin (Exhibit 27, Serials 1474-1475). Longhand notes appearing on Exhibit 29, Serial 821, and identified by K.H. Smith as being in his handwriting, indicate that the meeting was held and that both bulletins referred to therein were sent out (Exhibit 29, Serial 483).

57. The bulletin on Material Supply Procedure refers to the bulletin on supply of electrical materials (Exhibit 42) and suggests the following method of helping to implement the policy contained therein:

' . . .

2. The Committee believes that it would be advisable to help our members give effect to this policy by meeting to discuss any contentious job and issue advice and instruction regarding the particular set of circumstances involved.

3. It is felt that, if our members present a united front in regard to such jobs, that the effect will be tremendous in accomplishing our aims to have all of the material supplied by or through the Electrical Contractor. To present a united front, it is of course necessary to know what action your fellow contractor is taking under certain conditions.
4. If you become aware of jobs that you believe do not conform to the Association Policy, please advise our Manager, K. H. Smith at once, so that a common policy Bulletin can be issued to cover that particular job.
5. Sample Bulletin.

- (A) A firm of consultants have called for tenders for wiring a works office required for the new Hydro Steam plant at the foot of Leslie Street, in which they propose to purchase all of the material or re-use some of the material on hand. The recommended procedure was:-

As it is necessary to prepare a material list to estimate the Labour, the material should be priced and a complete selling price prepared to include both material and labour. Then a deduction should be quoted for the cost of all, or part as requested of the material, leaving the estimated profit for the material in the remaining price for labour and expenses.

- (B) The Township of York called for tenders for a 27 K. V. substation, from the manufacturers of Transformers, Switchgear etc., as prime Contractors. The Manufacturer in turn called on Electrical Contractors to quote to them as a sub-contractor to provide the installation labour and the bits and pieces.

It is recommended that the procedure be reversed, that is, the Electrical Contractor should tender on the complete job, taking the prices of equipment from the manufacturers and including them in his complete tender.

6. Let us know what you think of this type of Bulletin and if you consider it advantageous to have every Electrical Contractor acting together in this way.
7. Or do you think it would be better to put this information in the hands of our Manager so that it would be available to any member to secure the information, when needed?'

(Exhibit 27, Serial 1463)

58. Meanwhile, the Electrical Contractors Association of Ontario was making further overtures to CEDA with regard to some form of joint action in connection with the Supplier Relations Program. On September 24, 1956, C. W. Dent wrote to Norman Franks, the Secretary-Manager of CEDA, advising that the first five bulletins had been issued. The letter continued as follows:

' . . .

There are undoubtedly going to be many problems to work out in making our policy effective, both on the part of your members as well as ours.

For this reason, we believe it would be to our mutual advantage to set up a permanent Joint Committee of 3 from each Association to meet once a month to discuss these problems, work out acceptable solutions, and issue Bulletins to both of our memberships for their information and guidance.

Please advise us if your members would go along with us on such a committee.

. . . '

(Exhibit 25, Serial 1424)

On September 27, 1956, Norman Franks of CEDA replied to Mr. Dent's letter announcing that the following members had been appointed to the Committee suggested by Mr. Dent: Ben Steen, Irwin Mather, W. LeGallais, Norman Franks (Exhibit 26, Serial 461). Similar overtures were made to the Canadian Electrical Manufacturers Association (Exhibit 25, Serials 1425-1426), but there is no evidence that this Association gave the Electrical Contractors Association any encouragement along this line.

59. D. M. Brown, the Chairman of the Supplier Relations Committee, also did some work in connection with the establishment of a uniform scale of commissions to be carried by the supply house for the installing contractor where the material was sold direct. On September 26, 1956, a meeting of the Executive Committee of Zone 20, was held at which Mr. Brown put forward a proposed list of commissions which was subsequently mailed out to certain members for their approval before being forwarded to suppliers (Exhibit 41, page 87). According to Mr. Brown, the schedule was sent to members of the Executive in Toronto and two replies, both favourable, were received. He also stated that no replies unfavourable to the schedule of commissions were sent in (Evidence, pages 162-163).

60. The documentary evidence indicates that at least Messrs. Dent, Dahmer and McDonald received copies of the proposed schedule of commissions (Exhibit 26, Serial 462; Exhibit 27, Serial 1492; Exhibit 26, Serial 875). Mr. Dent replied to Mr. Brown on October 4, 1956, in part as follows:

'I have your suggested schedule of commissions for suppliers to include in the sale price of Electrical materials for the installing contractor. These look good enough to try out on the trade and our members to start things going and if we have to revise it later, we can do so.

As soon as you hear from a sufficient number of your committee to be able to say "The Committee recommends ----", let us know, so that we can have it released to our members and all those concerned.

. . .

I have a letter from C.E.D.A. naming as their representatives to a Joint Committee with us, as follows:

Ben Steen, Irwin Mather, W. LeGallaio [sic], Norman Franks

We should try to schedule a meeting with them as soon as possible after you return from your holiday, as this discount schedule should be reviewed with them along with a few other items.'

(Exhibit 30, Serial 270)

61. Mr. Dahmer also replied to Mr. Brown on October 4, 1956, indicating approval of the suggested schedule of commissions (Exhibit 30, Serial 269). Mr. Brown also gave evidence that no meeting was arranged with the members of CEDA as suggested in Mr. Dent's letter of October 24, 1956 (Evidence, page 161). He also stated that no further action had been taken by the Association with respect to the proposed list of commissions (Evidence, pages 180; 183-184).

62. On September 13, 1956, C. W. Dent wrote to K. H. Smith, attaching a suggested letter to be sent to Public Utilities in the Metropolitan area in an effort to get them to conform to Association policy respecting the supply of material in calling tenders. The covering letter reads in part as follows:

'Attached is a suggested copy for a letter to be sent to the Public Utilities in the Metropolitan area, who are not at present calling tenders the way we want them to, please take this to next Tuesdays meeting and let the boys kick it around, then start sending it out as decided on there.

I think it would be a good idea to send a copy of the Final Draft to each of our members as it should be good propaganda.

. . . '

(Exhibit 26, Serial 451)

On September 20, 1956, the letter, in its final form, was mailed to the operating executive of each Power Supply Organization in Metropolitan Toronto over K. H. Smith's signature (Exhibit 41, page 20). The first two paragraphs of the letter are as follows:

'The members of our association, which includes most of the leading Electrical Contractors in the Toronto area and throughout Ontario, have long felt that tender calls for complete electrical installations such as Sub-stations should be directed to the Electrical Contractors rather than to the Manufacturers.

When tender calls are made to Manufacturers, their usual practise [sic] is to call on Electrical Contractors to quote on installations only, which quotations, the Manufacturers include in their tenders for complete installations. It is not in accord with the

Association's policy for its members to tender on electrical work where all or nearly all, of the equipment and wiring materials are supplied by others. As a result Manufacturers do not secure prices from those Contractors who are best able to make these installations.

. . . '

(Exhibit 41, page 20) "

One further development bearing on the objective of the Association in the Supplier Relations Program is referred to in the Statement of Evidence, viz., the organization in the spring of 1957 of the Canadian Electrical Contractors Association, whose members consist of provincial associations, comprising at the time Mr. Dent gave evidence (July 3, 1957) those of Quebec, Ontario, the Maritimes (considered as one province), Manitoba and Alberta. Efforts to establish this national association had apparently been going on for a considerable period. Mr. Dent reported on January 10, 1956 to a regular meeting of Zone 20 that numerous meetings had been held throughout the previous year, that the charter had been obtained and By-laws approved. The minutes of the meeting indicate that Mr. Dent stated: "The formation of an Association on the National level will greatly assist in curbing direct selling . . ." (Exhibit 41, page 35).

In oral evidence, on being questioned as to this statement, Mr. Dent said:

"Most manufacturing organizations are national in scope, and it is very difficult for such an organization to set a sales policy for a single province, such as Ontario. And if the sales policy were for the entire country they could overcome the difficulty of setting a regional policy."

(Evidence, pp. 191-2)

B. Effectiveness of the Program

(a) Methods Contemplated to Make It Effective

(i) Collective Boycott -

There is no suggestion in the evidence that the Association had any power to compel its members to refrain from purchasing materials or equipment from suppliers who did not accept and follow the Association policy. Rather the Association's efforts were directed towards convincing its members that adherence to such a policy

was in their own interest. In this respect the Association's position is well set out in a paragraph of Mr. C. W. Dent's letter of September 7, 1956 to all Association members (quoted earlier in this report), reading as follows:

- "5. It is illegal for us to ask you to withhold purchases from any suppliers whose name is not on the preferred list, but we can advise you of the names of those suppliers that do have a Sales policy that corresponds to the Association Policy. The rest is up to you, how you use the information."

(Exhibit 27, Serial 1477)

While Exhibit 42 indicates that the Association sought to persuade customers that it would be to their advantage to have all materials and equipment supplied by the contractor rather than purchased by themselves directly from the manufacturer or wholesaler, the weight of the Association's efforts was aimed at securing the acceptance of and adherence to the program by the various suppliers.

Two letters written by Mr. C. W. Dent in 1956, when he was President of the Association, indicate clearly the nature of the approach made to suppliers. The first is dated August 3, 1956 and is a lengthy letter to Mr. J. R. Leacock, Secretary of the Windsor Electrical Contractors Association. The letter is directed towards persuading the Windsor Association members to join the provincial Association. It contains the following paragraph:

"For example, the Electrical Contractors, all over Ontario, have said for years, why doesn't E.C.A. of Ontario do something about the wholesale jobbers selling material to our customers at the same price they do to us. But E.C.A. of Ontario is you and me and our fellow contractors, not a machine at Guelph. If we don't do it ourselves, no one will do it, so we must get together and decide jointly how we are going to force someone bigger than we are financially to do something that we believe should be done. You say, how could Windsor do this? No, the electrical contractors of Windsor can't do it. The electrical contractors of Toronto can't do it. Nor Hamilton, nor London. But, if we all get together, decide what we want to do about it together and then act together to make it work, the impact would be terrific. Twenty-one members of the W.E.C.A. couldn't do it alone but it is my firm conviction that 1000 electrical contractors in Ontario could. Say for example: 1000 electrical contractors told all of the wholesale jobbers that we would not buy any material from any one of them who sold directly to our customers

at the wholesale price, do you think they could afford to incur such an organized action? Now then, this is where E.C.A. of Ontario comes in. The electrical contractors in your Zone and my Zone decide on a policy, we instruct our Provincial Executive to tell the jobbers what we decided to do, and so this is just what would happen. One Thousand electrical contractors, none of who could have done it alone, got together and decided to put a common policy to work, through their Provincial Association."

(Exhibit 25, Serials 1386 - 90
at Serial 1387)

The second letter is dated August 28, 1956 and addressed to Mr. Anthony J. Derro at Sudbury, Ontario. It also is a lengthy letter and is intended to encourage organization of the E.C.A. of Ontario in the Sudbury area. It contains the following three paragraphs:

"There is simply no use whatever, expecting anyone else to do things for us. If we want things done for us, we must do them ourselves, because there is simply no one in this world that cares a damn whether our industry thrives or becomes strong, excepting Electrical Contractors. So, if we want things done to improve our industry, we must do it, and this means work for somebody. The logical sequence therefore is for the Contractors to get together and then for each one to take his turn for a year at a time to act as the leader to organize the Contractors activities.

But the Sudbury Contractors would not be alone in their work because he would know that if he put E.C.A. activities into effect in Sudbury that simultaneously the same policy would be working in each of the other Zone areas. For example, the Association have a policy respecting the Sale of Materials at wholesale prices to Electrical Contractors only. Now, if every Electrical Contractor in Sudbury were to simultaneously refuse to do business with a wholesaler who did not abide by the Association Policy, the combined pressure could make the situation sufficiently disagreeable to the supplier, that they would have to give up their unfair practises [sic] or go out of business entirely.

Again, the Electrical Contractors in St. Thomas are nearly 100% organized. So when a Druggist who built a new store bought his fluorescent fixtures through their chain organization 'Every' Contractor refused to hang them, without adding their usual profit for the fixtures to the installation price. The Druggist in this case

had no alternative but to pay the Contractor his profit or commission because there was 'no one' who would disregard the policy of the Association as interpreted by the Local Zone and hang them for him otherwise. So, simply by sticking together, one of their members secured his rightful Commission on this job, and the rest knew full well that when their turn came, they would get the same support."

(Exhibit 25, Serials 1401-04
at Serial 1402)

One further document may be quoted. This is a report by Mr. C. W. Dent as Chairman of the Membership and Registration Committee, dated September 10, 1956, and made to the regular monthly meeting of Zone 20, E.C.A. of Ontario on September 11, 1956. The first two paragraphs of the report are as follows:

"The membership of Zone 20 and also E.C.A. of Ontario has been growing at a very encouraging rate. The members of Zone 20 together with our Associates now numbers about 104 and the E.C.A. of Ontario number is well over 700 and growing every day.

There are of course many other Contractors who have not joined us yet and the assistance of every member is requested in twisting the arm of every such Contractor until he says uncle and joins. I can only stress that the more Contractors who become members and carry out the E.C.A. Policies, the greater will be the need for the Inter-industry Association members to co-operate with us. You will be able to see as well as I that if 200 in Toronto and 2,000 Contractors in Ontario all ask for the same thing in the same way and with the same degree of determination that no one of the people who need our services and co-operation would dare to oppose us in any just and legal demands, if we have enough intestinal fortitude to stand up for our policies and insist on their adoption."

(Exhibit 41, page 19)

The foregoing written statements by the man who was then President of the Association lead irresistibly to the conclusion that a collective boycott by its members was regarded as a potent weapon to secure adherence by suppliers to Association policies. Its use or the threat thereof was clearly contemplated. It is clear also that some of the Supplier Relations bulletins referred to a little earlier in this chapter were intended to assist contractor members in exercising such

a boycott. The lists in these bulletins of manufacturers and wholesalers who had and of those who had not given a satisfactory reply to the Association's request for a statement of sales policy can only have been intended to indicate to the members those suppliers with whom they should deal and more particularly those with whom they should not deal. This conclusion is supported by an item in the minutes of an Executive Committee meeting of Zone 20 on September 26, 1956, reading as follows:

"The black and white lists of suppliers needs amending as some blacks are expressing a desire to be included in the whites which is proof that the activity of this committee is being felt in the industry."

(Exhibit 41, page 87)

Further support is found in an item in handwritten notes of this meeting of September 26, 1956, made by Mr. K. H. Smith (Manager of Zone 20) as follows:

"Jobber Relations. Don M. Brown.

Guelph office will mail to membership an amended list of approved suppliers."

(Exhibit 29, Serial 848)

In oral evidence Mr. Smith stated that he understood the term "approved suppliers" in Serial 848 to be "a list of suppliers whose policy conformed with the Association policy" (Evidence, p. 90), and the term "Association policy", as he had used it, to be the policy set out in a yellow sheet headed "Bulletin on supply of electrical materials, Electrical Contractors Association of Ontario." This yellow sheet is Exhibit 42 already referred to.

(ii) Union Agreement

In the electrical contracting industry there are both non-union and union shops, the latter term signifying firms that employ only union labour. The Statement of Evidence, as already stated, alleges that the Association exercises considerable influence upon the International Brotherhood of Electrical Workers in determining who shall be entitled to hire members of the Union.

There is no evidence that any Collective Bargaining Agreement has ever been made by the Association or any of its Zones with any Local of the I.B.E.W. There are in evidence, however, agreements signed by contractors in the Toronto area (Zone 20) with Local 353 of the I.B.E.W. One such agreement was made in 1954 and, by

its terms, was to continue till April 30, 1956. Others were made in June 1956, to terminate on April 30, 1957. These agreements are on printed forms, and it is obvious that each was intended to be signed by all electrical contractors with whom Local 353 entered into a Union agreement during its currency.

In both agreements the clauses alleged to be relevant to the Association's Supplier Relations Policy are Clauses 3 and 4. In the earlier agreement Clause 3 reads as follows:

"3. (a) The Company agrees not to employ anyone on Electrical Construction Work who is not a member of the Union.

(b) No member of the Union shall be permitted to work at Electrical Construction Work for anyone who is not a party to this Agreement.

(c) The Union shall not sign this Agreement with anyone, other than a Party whose business is recognized as Electrical Construction work."

Clause 4 provides for arbitration "Should a case arise where the application of the term 'Electrical Construction Work' be obscure, or the question of a Member being permitted to work for anyone other than those signing this Agreement, becomes necessary, . . ." (Exhibit 30, Serial 310).

In the 1956 agreements the only change is an added provision in Clause 3(b), which Clause reads as follows:

"3. . . .

(b) No member of the Union shall be permitted to work at Electrical Construction work for anyone who is not a party to this Agreement, nor shall members of the Union install material or equipment unless supplied by the Company."

(Exhibit 26, Serial 421 and
Exhibit 27, Serial 1454)

At the hearing before the Commission it appeared that a later form of Union agreement came into use in 1957. No copy of this agreement is in evidence, but counsel stated that in it Clause 3(b) is further amended by adding at the end thereof the words "unless by mutual agreement". It may be noted that the 1957 agreement was not in effect till some time after the inquiry was commenced, for Mr. Dent, giving oral evidence on July 3, 1957, stated that the previous agreement had expired on May 1, 1957. He was questioned further:

"Q. And has it been replaced by a subsequent agreement?

A. Not to this date; they are just in process of negotiation now."

(Evidence, p. 197)

In any event the addition of these words to Clause 3(b) is not of great consequence. The Clause, in its 1956 form, was introduced for the benefit of the contractor, at the request of the Labour Relations Committee of Zone 20, as will appear in the next succeeding paragraphs. The words added in 1957 do not in the slightest degree interfere with his right to insist on being the supplier of materials and equipment.

We now consider what the Association had to do with these successive Union agreements.

In the minutes of a meeting of Zone 20 held on February 13, 1956 there is a statement that Mr. C. W. Dent made reference "to section 3 of the existing Union agreement." The minutes further record that Mr. Dent reported orally that the Labour Relations Committee (of the Zone) had met twice, had organized and made progress in discussing proposed changes in the expiring Union agreement (Exhibit 41, page 31).

In oral evidence Mr. Dent was asked what he had to do with the Labour Relations Committee in February 1956 and replied that he was the work-horse of practically every activity of the Zone at that time. He said that "about that time of the year we usually get a request from the Union to amend the existing agreement." He proceeded to say that a committee is then organized to meet and negotiate with the Union generally on behalf of their own (Zone 20) members. In 1956 a new agreement was reached which was recommended to the membership for a vote and was adopted. The result of the negotiations was embodied in the agreement signed by his company, Roxborough, of which Serial 421 referred to above is a part (Evidence, pp. 198-201).

At the time this agreement was negotiated in 1956, Mr. Frank J. Dahmer was Chairman of the Labour Relations Committee of Zone 20. He was questioned about the Clause concerning the supply of electrical materials by the contractor. He was shown Serial 421 and pointed to Clause 3(b):

"Q. My question was: had you entered into any agreement; that is, had your committee entered into any agreement with the union concerning the policy that you have described as being set out in Exhibit 42?

A. We asked that this be inserted in the agreement. It was not negotiated into the agreement. We asked for its insertion.

Q. That the item pointed out by you as item 3(b) in serial 421 be inserted in the agreement, is that right?

A. Yes.

Q. And did you recommend to the members of E.C.A. that they accept that clause, 3(b) in their union agreements?

A. The committee did, yes.

Q. The committee did?

BY MR. ROHMER:

Q. This is with respect to zone 20, only?

A. Yes, that is as far as we have. That is as much jurisdiction as we have."

(Evidence, pp. 231-2)

Zone 20 engaged in further activities in connection with the Union agreement of 1956.

The minutes of a special meeting of Zone 20 held on May 12, 1956 contain the following two paragraphs:

"The attention of the meeting was drawn to incorporation in the new union agreement of an important addition to clause 3(b). The new clause reads 'No member of the Union shall be permitted to work at Electrical Construction work for anyone who is not a party to this agreement, nor shall members of the Union install material or equipment unless supplied by the Company (i.e. by an Electrical Contractor who is a party to the Union agreement.) The underlined portion is an addition.

Discussion disclosed that strict compliance with this condition of labour supply will be exacted, and therefore, it is useless for Electrical Contractors to bid jobs on any other basis than supply of material and equipment themselves. They could not obtain labour."

(Exhibit 41, page 25)

In oral evidence Mr. Dahmer (then president of Zone 20) said that he took part in the discussion, but that there was no way of enforcing strict compliance with the condition of labour supply (Evidence, p. 233).

Under date May 17 of that year a letter headed "Materials and Equipment Supply", bearing the typed signature of Frank J. Dahmer, President, E.C.A. of Ont., Zone 20, was addressed to all members of Zone 20. This letter reads as follows:

"Under an agreement between Local Union 353, I.B.E.W. and Electrical Contractors, effective May 1st, 1956, no member of the Union is permitted to install material or equipment unless supplied by an Electrical Contractor who is a party to the agreement.

Questions are bound to arise immediately as to what constitutes 'materials or equipment' for the purpose of this agreement and some guidance in the matter at an early date is essential. The problem was assigned to your 'Business Practices Committee,' a standing committee set up by your Directors as authorized by a General Meeting of Zone members on May 8, 1956.

Subject to further clarification from time to time as circumstances may require, this Committee recommends that the equipment listed below be exempt from the operation of the labour withholding [sic] provision. That is to say, the equipment listed below may be supplied by others than Electrical Contractors without stopping supply of Union labour or violating the general principle of the Union agreement.

EXEMPT MATERIALS OR EQUIPMENT

- (a) Package units such as air-conditioning units, oil burners and boiler assemblies which are completely factory-assembled and tested.
- (b) Starting devices designed expecially [sic] for particular units.
- (c) Starting and control equipment supplied as part of a contract by members of the National Association of Master Plumbers and Heating Contractors.
- (d) Service equipment supplied by a Public Utility Corporation.
- (e) Special scientific or research equipment.
- (f) Equipment for which it can be determined in advance that the supplier has retained a sales commission for the electrical contractor by whom it will be installed.

Obviously, it is useless for Electrical Contractors using Union Labour to bid jobs which do not conform with this provision of the Union agreement. They could not get labour. Your Business Practices Committee is of the opinion, that it would be advantageous for all Electrical Contractors, whether using Union Labour or not, to follow this practice and so recommend. It is a business practice which has long been an objective of your Association. With a foundation established by the new Union agreement, it can be made completely effective by co-operation of the membership as a whole.

Your Directors feel that this is yet another accomplishment to the credit of E.C.A. membership."

(Exhibit 29, Serial 707)

Mr. Dahmer stated in evidence that the list of exempt materials and equipment set out in the foregoing letter had been discussed and approved at a meeting of Zone 20 but that it had not been discussed, to his knowledge, with the Union.

Under the same date, letters, identical in content, bearing the typed signature of K. H. Smith, Manager, Zone 20, were addressed to "Electrical Equipment Wholesalers and Manufacturers" and to "Architects and Engineers". The letters read as follows:

"Under an agreement between Local Union 353, I. B. E. W. and Electrical Contractors in the Toronto region, effective May 1st, 1956, no member of the union is permitted to install material or equipment unless supplied by an Electrical Contractor who is a party to the agreement.

Obviously, it is useless for Electrical Contractors using Union Labour to bid jobs which do not conform with this provision of the Union agreement. They could not get labour.

Your co-operation in this matter to avoid embarrassment to all concerned would be appreciated."

(Exhibit 29, Serials 709 and 712)

From handwritten notes on Serial 712 it appears that the manufacturers, wholesalers, architects and engineers to whom the letters were sent were those whose names were shown in the yellow pages of the Toronto telephone directory. The notes indicate that the letter was also sent to the Canadian Electrical Distributors Association.

To what extent was the Union agreement of 1956 (expiring April 30, 1957) entered into by electrical contractors in Zone 20? The Association comprises both union and non-union shops, and only union shops would make such an agreement. On October 1, 1956, Mr. C. W. Dent, in a letter to the Secretary of the Quebec Corporation of Master Electricians, gave the number of union shops in Toronto as 74. In his sworn Return of Information, dated January 1, 1957, Mr. Dent stated there were 52 members of the Association in Zone 20 who were parties to a collective agreement with the I.B.E.W., all containing the clause respecting the supply of material and equipment by the company, i.e., the employing contractor. The Return also shows that there were 111 members of the Association in Zone 20 at that time, only two of whom had become members since October 1, 1956.

In the summer of 1956 Zone 20 made efforts to recruit as members of the Association the union shops affected by the Union agreement that were not already members. A letter dated August 10, 1956 was sent by the Zone Manager, Mr. K. H. Smith, to eight union shops not then members of the Association. The first two paragraphs of the letter are as follows:

"As you know, our Association negotiated the agreement now in effect between Electrical Contractors in Metropolitan Toronto and I.B.E.W., Local 353. At the present time all but 10 of the Union shops concerned with this agreement are members of the Association. Of these, two are pledged to membership but not actually enrolled. In effect, therefore, only 8 contractors, including yourself, are outside the fold.

Your membership would still further strengthen the Association in all its activities on behalf of the Electrical Contracting Industry, including not only labour negotiations but also sound Business Practices, Jobber Relations and Bid Depository procedure."

(Exhibit 29, Serial 806)

It seems safe to assume from this letter that union shops which were not members of the Association, had signed agreements with the Union similar to those signed by members.

While the activities discussed under this heading were confined to Zone 20, the Commission entertains no doubt that they were carried on pursuant to Association policy with the knowledge and approval of the Association. In this connection we note again that Mr. C. W. Dent, who was President of Zone 20 in 1955, was also First Vice-President of the Association in 1955 and until April 1956, when he became President of the Association.

Expressions used in two of the documents quoted above are likewise significant. Thus, Serial 707, the letter on "Materials and Equipment Supply", sent to members of Zone 20, speaks of the supplying of materials and equipment as "a business practice which has long been an objective of your Association". Again the last paragraph states:

"Your Directors feel that this [the amended condition in Clause 3(b) of the Union agreement] is yet another accomplishment to the credit of E. C. A. membership."

Again, Serial 806 speaks of the Association as having negotiated the Union agreement.

Finally, Mr. Dent's sworn Return of Information (Exhibit 31) indicates that Association members in three other Zones had signed Union agreements containing the clause relating to supply of materials and equipment. It should be noted, however, that Exhibit 31 also indicates that Union agreements signed by Association members in five other Zones did not contain that clause.

The cumulative effect of the foregoing evidence is so convincing that the Commission cannot agree with the argument made by counsel at the hearing, to the effect that if any liability attaches to anyone by reason of Clauses 3(b) and (c) of the Union agreement, such liability can be attributed only to the individual contractors who signed the agreement, not to the Association as a whole or to Zone 20. Further evidence supporting our conclusion on this point will be found under heading 2 of this chapter - "Restrictions on Entry", in section A, "Union Agreement".

(b) Application of the Program in Specific Cases

The Statement of Evidence relates particulars of nine specific instances in which it is alleged the Association applied or endeavoured to apply its Supplier Relations Program. In three of these cases the Statement alleges there was specific public detriment. In the other six cases the Statement says that either the evidence with respect to public detriment is inconclusive or the purpose of the Program was frustrated. The cases in which specific public detriment is said to have occurred will now be described:

Canada Packers, 900 KVA Sub-Station

The written evidence in this case consists of a sheet of handwritten notes which Mr. K. H. Smith identified as being in his handwriting. The document is Exhibit 29, Serial 852. It outlines the following facts. Canada Packers, Limited, in Toronto invited

tenders for a 900 KVA Sub-station, the equipment to be supplied by Northern Electric Company, Limited, and all material except transformers and cubicles to be supplied by the contractor (the successful bidder). Bids were to close at noon on October 11, 1956. On October 4, Bill McDonald Jr. of Black & McDonald Limited telephoned Mr. Smith about the supply of materials under this tender. Mr. Smith then called D. M. Brown about the matter but did not mention Black & McDonald. Then Smith referred Black & McDonald to exemption (f) from the memorandum of May 17, 1956. He suggested that Black & McDonald ask Northern Electric if a commission would be retained for the contractor. (The "memorandum of May 17, 1956" is the letter, Exhibit 29, Serial 707, cited earlier in this report and "exemption (f)" recommends that equipment for which the supplier has retained a commission for the installing contractor be exempt from the general rule in the Union agreement that material and equipment be supplied by the contractor). If no commission would be retained he suggested to Black & McDonald that in their tender they include a mark-up on the value of the equipment supplied.

The document proceeds:

" . . .

B. & McD. says Northern has not retained for Contractor.

B. & McD. will add mark-up on \$19,000, value of Eqpt. supplied.

Explained above to C.W.Dent; he concurred.

Talk to Frank D. [Dahmer] about Northern Elec. attitude.

Oct. 8/56.

Discussed at meeting to-day. Black & McD., Windeler and Comstock, bidding . . ."

(Exhibit 29, Serial 852)

From Mr. H. J. McDonald's evidence, his company, Black & McDonald Limited, was the successful tenderer on this contract. He was questioned further:

"Q. Did your firm receive any commission on the value of the equipment that you installed?

A. No.

Q. Did you seek any?

- A. To the best of my knowledge, no. As I say, I do not know who supplied it.
- Q. Did you make any adjustment in the amount of your bid to compensate for not receiving commission?
- A. In all probability we did.

BY MR. ROHMER:

- Q. But you do not know?
- A. No, I am not sure. But I would say that in all probability we did, because we would bid the job slightly higher if we were not supplying all the equipment."

(Evidence, pp. 247-8)

Later in his evidence Mr. McDonald stated that where labour only was being provided by his firm, the materials being supplied from another source, his firm's practice, in computing a contract, was to apply an amount in addition to his ordinary charge for labour, because it cost a certain amount to do a job and if they could not get part of that cost from materials they had to get it from the charge for labour.

In the Commission's view the evidence in this case is not completely clear. The weight of the evidence is to the effect that the Supplier Relations Program and in particular Mr. McDonald's conversations with Mr. K. H. Smith were directly related to the increase in the successful tender submitted by Black & McDonald Limited. Mr. McDonald's later statement suggests, however, that the increase might well have been made even if there had been no Supplier Relations Program. The Commission inclines strongly to the first of these conclusions. Mr. McDonald's telephone communications with Mr. K. H. Smith can have had no other purpose than to assist in making the Supplier Relations Program effective.

R. L. Hearn Steam Generating Plant

Earlier in this chapter reference was made to a bulletin bearing Mr. H. J. McDonald's signature, entitled "Material Supply Procedure", which was sent to Zone 20 members early in September 1956. This bulletin referred to Exhibit 42 and included the following paragraphs:

- "4. If you become aware of jobs that you believe do not conform to the Association Policy, please advise our

Manager, K. H. Smith at once, so that a common policy Bulletin can be issued to cover that particular job.

5. Sample Bulletin.

- (A) A firm of consultants have called for tenders for wiring a works office required for the new Hydro Steam plant at the foot of Leslie Street, in which they propose to purchase all of the material or re-use some of the material on hand. The recommended procedure was:-

As it is necessary to prepare a material list to estimate the Labour, the material should be priced and a complete selling price prepared to include both material and labour. Then a deduction should be quoted for the cost of all or part as requested of the material, leaving the estimated profit for the material in the remaining price for labour and expenses.

. . ."

(Exhibit 27, Serial 1463)

In oral evidence Mr. McDonald identified the consultants as "Stone & Webster", and the plant as the "Richard A. Hern [sic] steam plant" (Evidence, pp. 244-5).

Further written evidence is found in Exhibit 29, Serial 796, which consists of notes in the handwriting of Mr. K. H. Smith. The document reads as follows:

"Material Supply

R. L. Hearn, Steam generating station.

Stone & Webster asking for quotations, labour only

July 27/56. Harmon called. What is Ainsworth & others doing? I called C. W. Dent. He would like to see matter stand until next Tuesday meeting.

Call Ainsworth, Gerrard 5921.

Harmon called back; will hold until discussion next week.

Ainsworth says: no decision at discussion last week, left in C. W. Dent's lap to round up concerted

action.

I informed Harmon of Ainsworth's position.

July 31/56.

Decision to quote including materials with deduction of net cost of materials as alternative. C. W. Dent will inform C. Ainsworth.

Aug. 13/56.

Harmon says 'Spade' awarded the Contract. Suggests I call Mr. Roote, Stone & Webster, Project Engineer. Hargrave 1165.

I talked to Mr. Burns and explained the situation. He will have Mr. Roote call me.

August 14/56:

Baldwin says he is aware of Union Agreement; took job on understanding with Stone & Webster; that union condition would be met. I informed C. W. Dent"

(Exhibit 29, Serial 796)

Mr. Smith, in oral evidence, identified some of the persons named in the document as follows:

Harmon	- Canadian Comstock Company Limited
Ainsworth	- an electrical contractor
Spade	- an electrical contractor
Burns	- in Mr. Roote's office, Stone & Webster
Baldwin	- Spade Contractors Limited

(Evidence, pp. 105-8)

Mr. Smith further stated that Stone & Webster had asked for quotations for labour only for the construction of the Hearn steam generating station. He was questioned concerning the entry:

"A. . . .

I talked to Mr. Burns and explained the situation,

. . . .

Q When you say that you 'explained the situation', what did you say to Mr. Burns?

A. I assume I went all over -- the notes above, there, show it -- probably referring him to this yellow bulletin. That is always the topic of our conversation.

Q. The yellow bulletin being Exhibit No. 42 ?

A. Yes."

(Evidence, p. 107)

He was also questioned concerning the entry dated August 14, 1956:

"Baldwin says he is aware of Union Agreement; took job on understanding with Stone & Webster, that union condition would be met. I informed C. W. Dent."

He was referred to Serials 675, 676 and 677, Exhibit 29, which is a copy of the printed form of Union Agreement stated to become effective on May 1, 1956:

"Q. That is part of Exhibit 29 in these proceedings. Is the 'union condition' to which you have referred in serial 796 set out in this document?

A. Yes, it is."

(Evidence, p. 109)

He was questioned further:

"Q. My question is directed to whether or not the words 'union condition' are your words describing what went on, or are they words that Mr. Baldwin used?

A. Baldwin -- I am quoting -- 'Baldwin says he is aware of union agreement'.

Q. Yes; what about the term 'union condition'?

A. Took job on understanding with Stone & Webster that union condition would be met.

I would be quoting what he told me in this note."

(Evidence, p. 111)

While this episode was dealt with in Zone 20 it is to be noted that C. W. Dent, then President of E. C. A. of Ontario, was consulted and kept fully informed.

The successful bidder on this contract, Spade Contractors Ltd. is a member of the Association. Since Mr. Baldwin, of that company, stated that he was aware of the Union agreement and that the job had been taken on the understanding with Stone & Webster, that the Union condition would be met, it seems reasonable to conclude that, in this instance, the Supplier Relations Program probably led to higher costs under the contract than would have been the case in the absence of such a program. There is, however, no direct evidence to this effect.

Orenda Engines Limited Transformer Purchases

In 1956 Orenda Engines Limited engaged Piggott Construction Limited as a general contractor for work on its plant at Malton, Ontario. Piggott Construction Limited engaged Canadian Comstock Company Limited as electrical sub-contractor.

On July 25, 1956, Orenda ordered one 1500 KVA transformer directly from Brown Boveri (Canada) Limited, the manufacturer and lowest bidder on a call for tenders. Subsequently, on November 26, 1956, Orenda ordered two similar transformers from Brown Boveri, at the same price.

From the evidence of Mr. H. L. Somerville, the Mill Purchasing Agent for Orenda, it appears to be his company's practice, where possible, to purchase equipment of this type directly from the manufacturer, rather than to have it supplied by the electrical contractor. He said: ". . . there is usually better delivery and a better price" (Evidence, p. 58).

It would appear from Mr. Somerville's evidence that the transformer ordered on July 25 was delivered toward the end of January 1957, and that those ordered on November 26 were delivered later in the first quarter of 1957. However, they were not delivered under these direct contracts with Brown Boveri, which had been cancelled (Evidence, pp. 57-59).

Questioned as to the reason for cancelling the contracts, Mr. Somerville said:

"A. We had a request from Piggott to the effect that Comstock could not or would not install the equipment that they did not purchase themselves, due to some union agreement that was in effect. So, as we were going to pay exactly the same price to Piggott as we had arranged with Brown Boveri, we went along with the deal and switched the orders over.

Q. Did you have correspondence with Piggott about that point?

A. No, we did not. Mr. Piggott was in conversation with Mr. Cyma, our chief plant engineer, and that was where the original request came from."

(Evidence, p. 59)

And later in his evidence:

"Q. What arrangements, if any, did you make in order to be able to purchase at the same price through another chain?

A. Piggott agreed not to charge their usual profit on top of the material they were buying for us."

(Evidence, p. 61)

The principal documentary evidence concerning this matter is given in the Statement of Evidence as follows:

"103. On January 3, 1957, K. G. Brown, Estimator for Canadian Comstock Company Limited, wrote to Brown, Boveri (Canada) Limited in Toronto as follows:

'We have been authorized by Orenda Engines Ltd. to issue Purchase Order for One (1) 1500 KVA Transformer and for Two (2) 1500 KVA Transformers with arrestor mounts. These transformers are presently on order under Orenda order numbers as outlined below. It is the owner's intention that our orders will supersede theirs without prejudicing the present delivery schedule. After our orders are acknowledged they will cancel their orders to you.

In order that we may initiate our orders properly, we request a quotation showing our prices and the delivery dates for the following: . . .'

(Exhibit 23, Serial 1501)

104. On January 4, 1957, B. Manning of Brown, Boveri (Canada) Limited, replied by letter, stating in part:

' . . .

Please be informed that prices, delivery etc. will remain the same as the orders now standing from Orenda Engines Limited if these are superseded by new orders from Canadian Comstock.

One further point we wish to make is that we do not think it possible to make any change on Orenda Purchase Order 8-712-91-Q covering 1-1500 KVA transformer, as this piece of equipment has already been built and will be delivered next week.

. . . '

(Exhibit 23, Serial 1503)

105. On January 8, 1957, D. H. Leckie, Manager, Electrical Department, Canadian Comstock Company Limited, replied to Mr. Manning's letter as follows:

'We are in receipt of your letter of January 9th, and note that you have not offered a Contractor's discount on your prices.

It is universally accepted that Contractors are to be given a preferential price that is a substantial percentage less than that given to the "end user".

We request your consideration of this matter and its importance to us as Contractors who maintain tools for the installation of such equipment.

We would point out that the Electricians' Union Agreement with the Contractors states that they will install only the electrical equipment that has been purchased by the Contractor.

It will be necessary for you to change Orenda Engines Ltd. Order #8-712-91-Q to our order so that there will be no cause for delay in the installation of the 1500 KVA Transformer.

We suggest that your early attention to the price changes will permit us to issue order that

will allow you to present your invoices at an early date.'

(Exhibit 23, Serial 1500) "

On January 16, 1957, Mr. Noel Wright of Brown Boveri wrote Mr. Somerville the following letter:

"We have been informed in pre-emptory [sic] terms that the Canadian Comstock Co. Limited, Hamilton, Ontario, will only install electrical equipment that has been purchased by the contractor. They further state that you will be cancelling your above orders and that they, Canadian Comstock, will re-issue them on us.

I am sure you feel that this comes as a shock to us and that we have no intention of complying with Canadian Comstock request without your complete authorisation and instructions. We would therefore be glad to have your comments and suggestions.

In the original instance, on June 23rd, 1956, we quoted Piggot[t] Construction for one 1500 KVA transformer. Therefore later when we received your two above orders direct we saw no reason to sell you at any other than the price quoted Piggot. In the normal way throughout the rest of Canada we do not as a rule quote the end user and then pay a discount or commission to the electrical contractor doing the work.

In this particular situation in Ontario we have every intention of abiding by the existing Electricians' Union Agreement (to which we are not a party). Therefore it would appear that in this instance we must make some token discount or commission to Comstock, should they place an order with us for transformers to be used by yourselves.

In the above two orders there being, at the moment, no contractor involved we have not added anything to our price to you to cover such commission and therefore any concession to Comstock would be purely nominal and gratuitous in this instance.

No doubt this is a problem that has already come to your attention and we would be only too happy to have your comments and instructions as to how to proceed."

(Exhibit 22)

One other document in evidence is an order dated March 27, 1957 from Canadian Comstock Company Limited to Brown Boveri for one 1500 KVA transformer. It begins:

"This order supersedes Orenda Engines Purchase Order #8-712-91-Q dated July 25/56:

Orenda Engines order is to be cancelled and supply us as per your quotation."

(Exhibit 24, Serials 1504-5)

The price shown in the order, not including sales tax, is \$9,390.00 less $2\frac{1}{2}\%$ rebate, \$234.75.

The order contains a note that the transformer had been received on the job.

From the foregoing evidence it seems clear that, by the application of the Supplier Relations Program, Brown Boveri was in effect forced to allow Canadian Comstock a rebate of \$234.75. No written evidence appears to be available concerning the re-ordering of the two transformers originally ordered on November 26, 1956.

The other six cases described in the Statement of Evidence, as mentioned above, all arose in Zone 20 in 1956 and were all cases in which tenders were called for, the equipment or materials to be supplied by the owner, not the electrical contractor.

Mr. C. W. Dent's evidence indicates that: "as that was contrary to our policy" the officers of the Zone had to decide upon a policy (Evidence, p. 207).

He stated the general procedure as follows:

"A. Yes. You see, the members had established a policy that they would not undertake work in which they had not supplied the material. So they come and ask for advice and directives and we try our best to get it for them. And I might say that the general procedure is that our manager is instructed to contact customers involved and ask for their cooperation in changing the bidding instructions so that the material will be supplied by the contractor tendering on the job. This is something we tried to sell to the purchasers -- not just to slug them over the head with it. We tried to get their cooperation in it."

(Evidence, p. 208)

In these six cases various steps were taken with a view to securing adherence to the Association's policy that the electrical contractor should supply the equipment and materials or else receive a commission or allowance in respect of them. In some cases communication was made in writing, or orally, or both, with the owners and/or their architects or engineers, who were advised of the Association's policy in this matter and of the terms of the Union agreement respecting the supply of labour, and whose co-operation was asked. In at least one case Zone members were recommended to quote on both supply and installation, not installation only. In one case the successful bidder tendered on the understanding that he would receive a commission on material purchased by the owner directly. However, no commission was in fact paid. In one case it appears to have been recommended that Association members do not quote on the job. In one or two cases the final decision appears to have been that members might bid in accordance with the call for tenders.

In one case some tenders were withdrawn and the manufacturer wrote the owner stating: " . . . we have been informed by two electrical contractors that they may not be able to carry out the work as sub-contractors to ourselves due to recent rules within their Association. . . " (Exhibit 21, p. 41). A little later the manufacturer wrote the owner stating: "We have now been able to complete an arrangement whereby the electrical contractor will carry out the installation work without working contrary to the rules of his association and the union. However, this will involve an extra \$1000.00 to the price as quoted on our Form of Tender. . . " (Exhibit 21, p. 43). He was then informed by telephone that the owner was not interested in paying an extra thousand dollars for erection by a contractor (Exhibit 21, p. 37; Evidence, p. 53). Some seven or eight months later the manufacturer wrote the owner stating that the installation would be carried out by an electrical contractor named in the letter and stating a price for installation that was the same as the amount in the original tender (Exhibit 21, p. 45).

The evidence in these six cases, particularly in the last-mentioned case, indicates that the owner or the supplier or both suffered some detriment or disadvantage in the conduct of his business, through delays and inconvenience occasioned by the activities referred to. Apart from this there is no evidence in any of the six cases from which it might reasonably be inferred that the Supplier Relations Program was applied effectively or that any appraisable detriment resulted from the activities indicated. However, the evidence in these cases, coupled with that in the three other cases reviewed in greater detail, points up clearly the persistent and repeated efforts put forward in Zone 20 during this period to make the Program effective. In some instances these efforts appear to have been successful, with resultant higher costs to the owner or manufacturer.

2. Restrictions on Entry

A. Union Agreement

Earlier in this chapter reference was made to the Collective Bargaining Agreement signed by a number of electrical contractors in the Toronto area (Zone 20) with Local 353 of the International Brotherhood of Electrical Workers, and to the use made of it, particularly Clause 3 thereof, in connection with the Supplier Relations Program. The amendments to sub-clause (b) of Clause 3 made in 1956 and 1957 were also noted. The Statement of Evidence further alleges that Clause 3(c) of the Union agreement has been applied arbitrarily by the Association so as to restrict competition.

There is a good deal of documentary evidence, in the form of letters, memoranda, reports to meetings and minutes of meetings, which indicates that in 1956 the Association made efforts to obtain a province-wide Collective Bargaining Agreement with the I.B.E.W., to be signed by the Association on behalf of its union shop members, instead of by individual contractors. The move in this direction was led by Mr. C. W. Dent, who was First Vice-President of the Association prior to April of that year, and President from April 1956 till March 1957.

At a meeting of the Board of Directors of the Association on May 17, 1956 a special "labour" committee was appointed, on Mr. Dent's proposal, to meet the National Executive of the I.B.E.W. to lay out the policy for the province as a whole (Exhibit 25, Serial 1070).

On June 1, 1956 Mr. Dent wrote Mr. C. C. Rathgeb, Jr., one of those named as members of the committee. His letter asked for Mr. Rathgeb's consent to act on the committee and contained the following paragraphs, inter alia:

"This committee is requested to convene a meeting with the union at an early date to open discussions on possible methods of co-operation between the contractors and the I.B.E.W. to our mutual advantage generally and in particular whether we can negotiate a province wide agreement in which conditions would be the same throughout the province, with the possible exception of wage rates, with E.C.A. of Ontario being the signor on behalf of the employers.

. . .

It is our belief that, if a provincial agreement between I.B.E.W. and E.C.A. of Ontario on a provincial basis were reached, that this could be made the basis of

controlling, to a large measure, the hit and run contractor or engineering organizations who come in, do a job, and get out. Possibly the so called 'international' agreement abuses could be ironed out as well."

(Exhibit 26, Serials 418-9)

Three days later Mr. Dahmer, another member of the committee, wrote to the Chairman suggesting:

" . . . Possibly we could add to the agenda by including the material clause which was just recently inserted in the Toronto agreement. . . ."

(Exhibit 26, Serial 420)

It seems clear that at least one meeting was held with the Union executive in which the Union was asked for a province-wide agreement with the Association as negotiating body, but the Union turned down the request and no such agreement was ever made.

The purpose behind the attempt to obtain a province-wide agreement with the I.B.E.W. is not subject to any doubt. In addition to the assistance which such an agreement would afford to the Supplier Relations Program, it was expected to prevent or at least render more difficult the obtaining of contracts for electrical installation by general contractors, engineering firms and others not "recognized" as electrical contractors. As a result it was anticipated and intended that contracts then being secured by such firms would be diverted to electrical contractors. Two of the documents which make this intention clear may be cited as examples. The first is the report of Mr. C. W. Dent as First Vice-President of the Association to the Annual Convention in April 1956, in which Mr. Dent referred to relations with organized labour, and in so doing made the following statements, inter alia:

" . . . However, what I would like to see done this coming year is to secure a single province wide agreement wherein all conditions would be the same with only the hourly rate different to suit the various local areas, and in which the association would sign on behalf of all of its members who had occasion to use union labour. I would also like to see 'every' contractor who uses union labour become members of E.C.A. and then to ask the union to include in the agreement that they would supply men 'only' to members of E.C.A. of Ontario. (This would exclude industrial plants, general contractors, engineering firms, mill-wrighting companies or suppliers from securing union

labour and possibly divert some of this work to Electrical Contractor members.) Wishfull [sic] thinking? No I don't think so. The Master Plumbers Association and the Master Painters Association sign for their members and many other organizations in the States also do.

. . . "

(Exhibit 25, Serial 1034)

The second document is a circular letter dated June 27, 1956 written by Mr. Dent as Chairman of the Membership Committee of Zone 20, apparently to non-member union shop electrical contractors, urging them to join the Association (Mr. Dent's statement at Evidence, p. 211 that it was sent to members and that he did not believe it was sent to non-members, is clearly a mistake). The letter refers to the change in Clause 3 of the Union agreement that had been made that year, and contains the following paragraphs:

"It is the aim of the Association to have the next agreement signed by E. C. A. of Ontario on behalf of its members, in place of individual agreements with each Contractor. This could effect a significant change in the operation of Paragraph 3(b) of the agreement. Membership in E. C. A. of Ontario would be necessary to obtain I. B. E. W. Labout [sic] not only in Toronto but also throughout the Province of Ontario.

It will be readily seen therefore, that if the Electrical Contractors can become 100% organized during this agreement year, we, with the help of the change in Item 3, can really talk with one voice in the councils of Trade Unions, Suppliers, Manufacturers, and other inter-industry associations."

(Exhibit 29, Serials 770-1)

While the proposal for a province-wide labour relations agreement between the Association and the I. B. E. W. never materialized, its purpose of limiting electrical installations to "recognized" electrical contractors appears to have been achieved to some extent by the combined effect of Clauses 3(b) and 3(c) of the Union agreement signed by a number of individual electrical contractors in the Toronto area. It will be remembered that prior to 1956 Clause 3(b) read as follows:

"3. . . .

(b) No member of the Union shall be permitted to

work at Electrical Construction Work for anyone who is not a party to this Agreement."

and that in 1956 the following provision was added:

"nor shall members of the Union install material or equipment unless supplied by the Company."

and that Clause 3(c) reads as follows:

"3. . . .

(c) The union shall not sign this Agreement with anyone, other than a Party whose business is recognized as Electrical Construction work."

The operation of these clauses is illustrated by the experience of three companies as set out in the Statement of Evidence.

A. D. Ross & Company Limited, Montreal

Under date July 20, 1956 the Vice-President of this company wrote the Association for "Attention Mr. K. H. Smith, Secretary", the first three paragraphs and the last paragraph of the letter reading as follows:

"We are expecting to carry out the electrical installation in a plant to be erected in Etobicoke.

We have had some conversation about hiring men for this job with the International Brotherhood of Electrical Workers, with whom we have working agreements in various places.

They advise us that we should get in touch with you to have your certification that we are bona fide electrical contractors.

. . .

We would appreciate if you would kindly forward us a letter which we may give to the International Brotherhood of Electrical Workers, showing our standing as electrical contractors."

Mr. K. H. Smith replied on the same date:

"I have discussed your letter of July 20, 1956 informally with several of our directors. On the basis of the representations in your letter it seems clear that in fact, you are an Electrical Contractor, within the meaning of that term as contemplated in an agreement between the local union and members of our association.

However, an application from your firm for membership in our Association would facilitate our approach to the union on your behalf. In any case, if you can conveniently have a representative call at this office, I think the matter can be dealt with more promptly and more satisfactorily than by correspondence."

(Exhibit 29, Serial 794)

The company's letter was also discussed at a meeting of the Business Practices Committee of Zone 20 on July 23rd, 1956, but there is no evidence of any further developments.

G. M. Gest Limited, Montreal

Two incidents affecting this company arose in 1956, one of which is set out in considerable detail in the Statement of Evidence, supported by documentary and oral evidence. The facts of this case do not appear to be in dispute, and those relevant to the question we are now considering may be summarized as follows:

The Gest company, which has its head office in Montreal and a branch office in Toronto, was awarded, early in February 1956, by the Council of Metropolitan Toronto, a contract for the supply and installation of an electrical sub-station for a filtration plant at Scarborough. The contract had a price of \$211,700.

On February 10, 1956, Mr. C. W. Dent, as Chairman of the Labour Relations Committee of Zone 20, sent a bulletin concerning this contract to contractors who had an agreement with Local 353 of the I. B. E. W. Two paragraphs of the bulletin read as follows:

"The conditions of this job are such that it would be very difficult for him to do this work with other than Local 353 I. B. E. W. men. It is anticipated that this contractor may purchase the material, transformers, switch-gear etc. and then under pressure try to get some satisfactory to the agreement to undertake a labour only contract

to make the installation. Please read item 3 par. a, b and c of your agreement.

The Labour Relations Committee of Zone 20, E.C.A. recommend that all signatories to the agreement with Local 353, should refuse to undertake such a contract, for the reason that it may encourage other contractors, who are not recognized as 'engaged in electrical construction work' to undertake similar work."

(Exhibit 27, Serial 1435)

The matter was also discussed at a meeting of Zone 20 held on February 13, 1956 and at a meeting of the Directors of Zone 20 held February 20.

On April 18, 1956 the Chief Electrical Engineer for the Gest company called on Mr. W. Farquhar, the Business Agent for I. B. E. W. in Toronto, in connection with the supply of labour for the Scarborough contract. In his report on the interview these paragraphs appear:

- "a) Mr. Farquhar advanced that he was responsible for trying to have us disqualified.
- b) Under terms of agreement with other electrical contractors he cannot supply Union men to us.
- c) Does not accept us as a recognized electrical contractor, who to his own interpretation is 'a contractor who has and is performing electrical work and has an Agreement with Union at the different locals where work is conducted. Classifies G. M. Gest as a general contractor.

Suggests we get accepted by the Electrical Contractor's Board."

(Exhibit 3, p. 6)

Mr. J. H. Gest, President, and Mr. T. Gallagher, Vice-President of Construction, of the Gest company, also called on Mr. Farquhar, who:

" . . . more or less let us understand that if we were not members of the Electrical Contractors Association that he would not supply us with men."

(per Mr. T. Gallagher, Evidence, p. 21)

Mr. Gest and Mr. Gallagher also called on Mr. C. W. Dent, to discuss ways and means of joining the Association. Subsequently, on May 2, 1956 Mr. Gest wrote Mr. Dent, as President of the Electrical Contractors Association, applying for membership (Exhibit 4).

Mr. A. T. Muir, Vice-President of the Gest company stated the application for membership was made, "Because we considered it was the only way we would be able to get labour to do the work" (Evidence, p. 10).

The Gest company's application for membership was discussed at length at a Zone 20 meeting on May 8, 1956, where the minutes record that, "The feeling of the meeting was that this company was more General Contractor than electrical", and " . . . the matter was left in the hands of the executive committee to write to G. M. Gest & Co. conveying to them the answer to their application" (Exhibit 41, p. 23). A draft letter for this purpose was read to the Business Practices Committee of Zone 20 at a meeting on May 16, and was read at an Executive Meeting of Zone 20 on May 23. It appears also to have been read and discussed by the Board of Directors of Zone 20 on May 23. Then on May 25, 1956 Mr. K. H. Smith sent a letter prepared from this draft to G. M. Gest Limited stating that the Board of Directors of Zone 20 were unable to approve the company's application for membership, because, " . . . in their view, you are a 'General' Contractor rather than an 'Electrical' Contractor, in the sense commonly understood by members of the Association" (Exhibit 5).

The Gest company, being unable to obtain union labour to do the installation, arranged with Mr. F. J. Dahmer for his company, Ontario Electrical Construction Company Limited, to do the work for an "upset price" of \$12,527, based on that company's cost, plus a fee of 70%. Any savings effected in the course of the work were to be split on a fifty-fifty basis. All materials were supplied by the Gest company (Exhibit 8).

It might be thought that the acceptance of a contract by Mr. Dahmer's company on a "labour only" basis would conflict with the Association's policy and with Clause 3(b) of the Union agreement as amended in 1956. However, an exception was apparently made in this instance by Zone 20. The minutes of the Executive Committee meeting of the Zone on May 23, 1956 record the following:

"The application of G. M. Gest Co. for Association membership was discussed and K. H. Smith read a draft of a letter he had prepared declining their application on grounds that they are considered General contractors. Question of a policy on bidding for a sub contract from

G. M. Gest - it will be a labour only contract and according to union agreement we can not install material supplied by general - however it was felt that this material was purchased before the agreement came into effect and so bids would be in order. However, it was also felt that a charge for handling this material should be included and a figure of Four Dollars (\$4.00) per hour was thought to be reasonable."

(Exhibit 29, Serial 721)

There is no evidence before the Commission showing the final amount paid by the Gest company to Mr. Dahmer's company, but since Mr. Muir stated the Gest company's estimate for the work was approximately \$9,000, and since in a letter to the Municipality of Metropolitan Toronto, dated June 14, 1956, the Eastern Division Manager of the Gest company referred to the price of Ontario Electrical Construction Company for the electrical labour work on the contract as being considerably higher than the Gest company's own bid, it seems clear that the end result was higher cost to the Gest company.

The evidence in this case clearly establishes that by reason of Clause 3(c) of the Union agreement and the opinion of both the Union and Zone 20 of the Association that the Gest company was a general contractor and not an electrical contractor, the Gest company was effectively prevented from carrying out this work with men employed by it, and was forced to engage an electrical contractor as subcontractor in order to carry out the contract.

It may be noted that according to the evidence of Mr. Muir, the work involved in this contract was similar to work the company had been doing in Quebec. Also, the company had an agreement with the I.B.E.W. for outside electrical work in Ontario, but not for the type of work involved in the Scarborough sub-station. Further, from the evidence concerning the operations of the Gest company there appears to be no question but that the company was fully competent to carry out such a contract in a satisfactory manner. The evidence does not disclose that its competence was ever queried by the Union or by any electrical contractor.

The second incident involving the Gest company was one in which the University of Toronto called for tenders for lighting the University Stadium. The University advised the company that it was the low bidder, but " . . . that they were worried that we would not be able to get men to complete the job. . . . this job [had to be] completed in a specified time, on account of their commitments with the ball team . . ." (Mr. T. Gallagher, Evidence, p. 24).

Mr. Gallagher also stated:

"They gave us to the following afternoon to assure them that we could get the men from the union."

(Evidence, p. 24)

And again:

"Q. Were you successful in getting a supply of union labour for the university job?

A. No; we were given to the following afternoon. He said that if we could give some assurance -- by tomorrow afternoon that they would more or less award us the contract. . . ."

(Evidence, p. 25)

The company was unable to get men from the Union, just as in the Scarborough case, and it was not awarded the contract.

Here again, the Gest company was prejudiced in the same manner, as in the Scarborough case. It lost its chance for a contract which it would probably have obtained in the absence of Clause 3(c) of the Union agreement.

Catalytic Construction of Canada Limited
Sarnia, Ontario

The incident involving this company was similar in many respects to that of the Scarborough sub-station. It is described quite fully in the Statement of Evidence.

This company is a Canadian subsidiary of an American Company. Mr. G. E. Temple, its Vice-President and General Manager, described its purpose as the development of processes and their design, and the erection of such processes for the petroleum, chemical, mining and other process industries. He stated that electrical work is part and parcel of any chemical, petroleum or mining industry, and that the company had a staff of electrical engineers who were electricians. The company also had an international agreement made in the United States with the I. B. E. W. covering work in petroleum refineries only, which agreement applied in Canada. The agreement contained a provision that they would abide by the conditions contained in any existing local agreement (Evidence, pp. 27-8).

Early in 1956 this company bid for and obtained a contract from the St. Lawrence Cement Company, covering the mechanical erection of all mechanical equipment in a new plant at Clarkson, which is about sixteen miles west of downtown Toronto. The contract involv-

ed a relatively small amount of electrical work, for which two or three men were required. The company was then invited verbally to prepare for a tender call for electrical installations at the plant.

The company approached the I. B. E. W. with a view to obtaining men for both the mechanical work contract and the electrical installations, and Mr. Temple had an interview with Mr. Farquhar and another Union official, Mr. Ladyman. In Mr. Temple's evidence Mr. Farquhar's general attitude was that unless the company became a member of the Electrical Contractors Association of Ontario and thereby a signatory to the agreement between the Union and the Association [sic] he would have difficulty in supplying the company with men, for either the mechanical work contract or the electric installations (Evidence, p. 33).

Mr. Farquhar apparently gave some assurance, however, that he would be able to supply the two or three men needed for electrical work in connection with the mechanical work contract. Subsequently, by letter dated March 22, 1956, in reply to a written request for the supply of these men, Mr. Farquhar refused to supply the men. His letter stated:

" . . . I must advise you that members of the I. B. E. W. cannot be employed by your firm in the jurisdiction of this Local Union."

(Exhibit 13)

In the meantime, on March 2, 1956, the company had applied in writing for membership in the Electrical Contractors Association of Ontario (Exhibit 14).

The application was considered at a general meeting of Zone 20, on March 13, attended by Mr. Temple. After some delay a formal letter rejecting the application, dated April 16, 1956, was written by Mr. K. H. Smith to Mr. Temple, and stating, in part:

"As I understand the matter, your organization's application for membership was declined on the ground that it is not an Electrical Contractor within the meaning of that term as commonly accepted by the Electrical Contractors Association of Ontario."

(Exhibit 19)

As the company was unable to obtain Union labour, it never submitted a tender for the electrical installation contract (Evidence, p. 29).

With respect to the electrical work on the mechanical contract it appears that subsequently the International President of the I. B. E. W. in Washington, U.S.A. intervened and instructed Local 353 to supply the necessary men, which was done (Exhibit 20).

This intervention appears to have been made under a misunderstanding of the nature of the contract. Such an intervention was regarded by the Association as an abuse of the international agreement held by the company (Exhibit 29, Serial 678 and Mr. C. W. Dent's evidence, Evidence, pp. 203-4).

On the evidence, while Catalytic Construction of Canada Limited were not finally prevented from completing the mechanical contract there can be no doubt that by the operation of Clauses 3(b) and 3(c) of the Union agreement it was put to inconvenience and trouble from which it would not otherwise have suffered. Similarly, it was deprived of its opportunity of bidding on the electrical installations contract, since it appears that suitable men could not be obtained except from the I. B. E. W.

It may be noted that in Mr. Temple's evidence, the mechanical contract amounted to about \$1,250,000, of which not more than \$50,000 was for the electrical part, including both labour and materials. He also estimated the value of the electrical installations contract at approximately \$750,000 (Evidence, pp. 42-3).

While all the specific cases concerning general contractors discussed in this report have arisen and been dealt with in Zone 20, and though the Association By-laws have no provision excluding from membership general contractors who have a qualified Master Electrician on their staff, there is no reason to believe that the policy expressed in Zone 20 was not in general accord with the Association policy, though perhaps more rigidly applied. Mr. W. G. Booth, Secretary-Manager of the Association, was questioned concerning general contractors and E.C.A. membership. He replied:

"A. If they are just a general contractor, then they would not be an electrical contractor. So they would not have membership in our organization, which is primarily for the electrical contractors."

(Evidence, p. 138)

B. Membership and Registration

In the original "Constitution and By-Laws" of the Association, dated November 1, 1948, there is no reference to licensing or to registration. However, within a very few years after incorporation,

the Association made an effort to obtain provincial legislation requiring licensing of electrical contractors, journeymen and apprentices. Thus, a letter written by Mr. W. G. Booth, Secretary-Manager of the Association dated February 6, 1953, states: " . . . we are on an all out campaign in our endeavour to gain Licensing of the electricians for this Province" (Exhibit 25, Serial 1127).

According to a letter written by Mr. C. W. Dent, then Vice-President of the Association, on February 1, 1955, the licensing proposal was rejected by the Provincial Cabinet:

" . . . but at the same time it was suggested to the 'Association' that they would consider a 'Registration Plan' similar to that granted to the Association of Professional Engineers by the Engineers Act of 1937, wherein their Association sets the standards of qualifications, examines, and 'Registers' their members."

(Exhibit 28, Serial 499)

On April 29, 1954 Supplementary Letters Patent were obtained by the Association, extending the objects of the Association so as to include, inter alia:

" . . .

To establish standards of qualification for electricians who are members of, or associate themselves with the Corporation.

To establish or arrange courses of instruction, examinations and a system of registration and certification of electricians in different grades and classes for members of the Corporation, and others who may desire and apply for the same.

. . . "

(Exhibit 31, page 32)

Authorization to apply for these extensions of powers had been given at a special general meeting of the Association on February 12, 1954, at which meeting the By-laws were revised. The revised By-laws are set out in Schedule "C" to Exhibit 31. They provided for classes of membership in the Association. Full membership was confined to what may be called "contractors", of which there were two classes, (a) Master Members, e.e., Registered Master Electricians who were self employed, and (b) Employer Members, i.e., persons or corporations on whose behalf one or more Registered Master Electricians were engaged in making electrical installations,

as partner, employee or corporation officer. An Employer Member was not registered as such. By By-law No. 4: "The Board of Directors or the Executive Committee may grant Employer Membership to suitable persons or corporations upon application by them in the prescribed form." Associate Membership which did not confer voting privileges was open to Registered Master Electricians not qualified to be Master Members (not self-employed), and to Maintenance Master Electricians, Journeymen, Helpers and Apprentices, all of whom must be registered. "Registration" was registration under the By-laws.

By-law No. 26 provided for the establishment by the Association of a register open to public inspection. It established grades and classes of registered electricians, set up examining boards for Masters and Journeymen with power, inter alia, to prescribe standards of qualification and to set and conduct examinations.

By-law No. 18 provided for the bonding of all Master Members in favour of the Association for the purpose of guaranteeing (i) compliance with the law regulating electrical installations, (ii) the work done, and (iii) materials supplied by Master Members on the register of the Association.

By By-law 30, approved by a special general meeting of the Association on September 27, 1954, the bonding provisions were extended to Employer Members, and the definition of Employer Member was slightly modified (Exhibit 31, Schedule "D").

In 1955 the position of the Association in respect of registration was strengthened by an amendment to the Municipal Act, R.S.O. 1950, c. 243, which was passed by the Legislature of Ontario and which came into force on March 31, 1955:

"413. By-laws may be passed by the councils of towns, townships, villages and cities having a population of less than 100,000 and by Boards of Commissioners of Police of cities having a population of not less than 100,000.

. . . .

(3) For examining, licensing, regulating and governing electrical contractors, electricians, master electricians and journeymen electricians or for permitting them by reason of registration with the Electrical Contractors Association of Ontario or other qualification to carry on their trade without examination or licence, or both."

(Statutes of Ontario, 1955, c. 48, s. 43)

At the Annual General Meeting of the Association on April 12 to 14, 1956, the By-laws were further revised. The classifications of "Master Member" and "Employer Member" were dropped, being replaced by a classification "Contractor Member", defined as follows:

"(a) Contractor Member - (i) any person who has been qualified under these By-laws as a Registered Master Electrician and who is a member in good standing and who is self-employed or who employs one or more employees engaged in electrical work of any kind, and who has been bonded by the Association, or

(ii) any company or corporation who is in good standing and for and on whose behalf at least one Registered Master Electrician is engaged in doing or is responsible for those doing electrical work of any kind as a partner, employee or corporation officer on a full time basis. Any such company or corporation shall be bonded and shall be responsible under such bond for any work performed by it, its employees, servants, agents or subcontractors."

At the same meeting the definition of Associate Member was widened to include "an owner or officer of a Contractor Member which is a company or corporation" (Exhibit 31, Schedule "E").

The By-laws were again revised at the Annual General Meeting on March 28 to 30, 1957 (Exhibit 31, Schedule "F").

As we have seen, the Director alleges that the Association regards membership, and, to some extent, registration by the Association under local By-laws pursuant to the Municipal Act, as a means of controlling entry to the trade and thereby limiting competition. A further allegation is found in paragraph 164 of the Statement of Evidence, the first sentence of which reads as follows:

"The evidence indicates that the Association regarded the registration plan as a means of controlling supplies of electrical materials and keeping such supplies from reaching persons that the Association did not consider should be classed as electrical contractors."

At the hearing, counsel for the Association contended that these allegations were based on an assumption that registration by the Association and membership in the Association were the same thing, and that this assumption was entirely wrong. It was his submission

that an electrical contractor does not and cannot become registered as a contractor. He becomes registered as a mechanic. A person may be a member of the Association without being registered and may be registered without being a member.

Exhibit H-2, filed at the hearing before the Commission, affords some support for this contention. This document was compiled from the records of the Association and is headed: "Membership - Registration Report as at December 31st, 1957". The report indicates that as of December 31st, 1957 there were 727 paid-up and 96 delinquent members of the Association, or a total of 823. These figures include 21 paid-up Contractor Members and 1 delinquent Contractor Member who were not registered in any classification. The report also shows a total of 1,109 persons registered in the several classifications of electricians, viz., Masters, Journeymen, Maintenance and Apprentice. This number includes 292 paid-up and 16 delinquent registrants who were not members of the Association - 308 in all. Most of these 308 were Journeymen, but they include 75 paid-up and 6 delinquent Registered Master Electricians. It seems likely, since corporate contractors may be members of the Association, but cannot be examined or registered on the basis of technical skills, that most, if not all, of the 22 Contractor Members shown as not being registered are corporations. However, there is no evidence on this point.

On the other hand, the great mass of persons listed in Exhibit H-2 are not described as Contractor Members or as Master Electricians. They are described as Registered Contractors, 626 of whom are listed as paid-up members and 82 as delinquent members. This suggests that as late as December 31, 1957 registration and membership were not regarded as quite separate and distinct, in so far as contractors were concerned.

The evidence afforded by Exhibit H-2 is inconclusive, partly because it states the position at only one point in time, December 31, 1957, which was many months after this inquiry had been started. It is therefore necessary to examine further the available evidence.

At this point it is useful to note the terms of By-law No. 4 of the Association By-laws. Prior to the Annual Meeting of March 28 to 30, 1957 this By-law read as follows:

"4. Election to Membership - every person who has made application for Membership and Registration in the prescribed form, and has where such qualifications are required by these By-laws:

- (a) Passed the qualifying examination,
- (b) Been granted Registration in the appropriate

- classification,
- (c) Paid the appropriate fees,
 - (d) Had his bonding application approved,
 - (e) Undertakes to be bound by the Associations By-laws,

shall be granted membership in the appropriate class.

Every member, other than an Honorary Member, shall be assigned to the Zone in which such member is principally engaged in the electrical trade. Members who are not resident in the Province of Ontario shall be assigned to the Zone in which the Head Office of the Association is located."

(Exhibit 31, Schedule "E")

Up to that date also, one application form was used in applying for both membership and registration.

At the Annual Meeting in March 1957 this By-law was amended by deleting the words "and registration" in the introductory clause (Exhibit 31, Schedule "F"). From that date it is clear that an application for membership has been separated from an application for registration, but items (b) and (d) of By-law No. 4 have not been changed, so that for classifications for whom the By-laws require registration and bonding, these requirements are still conditions for granting membership. However, the practice of the Association has not always accorded strictly with the language of the By-law. While registration appears to have been a condition of membership prior to 1956, from the minutes of several meetings in 1956 it seems that by that time joint membership and registration were not actually required. The first of these meetings was a meeting of the Board of Directors of the Association held on May 17, 1956. The following item in the minutes of that meeting is quoted, to indicate the actual situation:

"Discussion was heard as to mandatory membership, and Mr. Booth stated that the By-law has been worded in a manner which permits a person to hold membership as a contractor member, and he does not have to become registered, or vice-versa. This has caused considerable controversy in Guelph. He stated that this could be explained by stating 'that this man does not have to become registered, but in this event he would have to put up a bond to the amount of \$2,000.00', which the Association makes available by membership - registration."

(Exhibit 25, Serials 1061-74,
at Serial 1074)

Chronologically, the first document in evidence bearing on the registration of electricians by the Association is a five-page document which was presented to the executive of the Association on June 13, 1953, prior to an executive meeting of June 14. The document is described as a program designed for licensing by the Electrical Contractors Association and was presented by Mr. Clifford C. Pollard, then Association Vice-President (Evidence, p. 141).

The document proposes the licensing of electrical contractors and master electricians, and the registration of electrical apprentices. The copy in evidence (Exhibit 25, Serials 1128-32) was received by Mr. W. G. Booth at the June 14 meeting (Evidence, p. 140). In one or two places in the first paragraph, referring to contractors and master electricians, the word "licensing" has been crossed out and the word "registration" inserted in longhand, which may indicate that it was about this time that the Association was advised that its licensing proposal would not be approved but that a registration plan might be acceptable to the Provincial Government. Some support for this view is found in the minutes of the executive meeting of June 14 where this item appears:

"Legislation:

The Joint Committee will produce a plan as discussed prior to the opening of this meeting and which is understood to be favourable to the Ontario Government."

(Exhibit 25, Serial 921)

Mr. Pollard's program called for obtaining legislative authority from the Province. Among its proposals were the following:

" . . . as soon as the charter is inaugurated by the Provincial Government, it will be the duty of the Electrical Contractors' Association to license all people in the Province of Ontario as soon as possible, . . . As well, when licensing is given to a contractor, there should be included in the fee he pays for his licence annually the Electrical Contractors' Association dues. In this way all men will belong to the Electrical Contractors' Association. . . . all jobbers and manufacturers should be notified that from henceforth they are to stop selling to all accounts that the Electrical Contractors' Association has not approved. In this way the Electrical Contractors' Association of Ontario will stop the back door selling that has been going on by industry since its inception. . . .

. . . notify all jobbers and manufacturers that if they do sell to their customers, which it is conceivable they may, they are to sell at full list price and that the contractor installing the job will collect his commission

from the manufacturer or jobber. . . ."

(Exhibit 25, Serials 1128-9)

Apart from the legislative proposals we have no evidence that the specific proposals contained in Mr. Pollard's program were approved at the executive meeting where they were presented. Nor have we any evidence that they were objected to. It is noted, however, that they are in full accord with the Supplier Relations Program of the Association.

Following the 1955 amendment to the Ontario Municipal Act referred to earlier in this chapter, the Association endeavoured to persuade the municipalities of the province to substitute E. C. A. registration for municipal licensing of electricians. Even before the amendment became effective Mr. C. W. Dent, then President of Zone 20 and First Vice-President of the Association, on February 1, 1955 wrote to the City of Toronto seeking its adoption of this change. Some passages in his letter are relevant to the issue before us.

"At a considerable expense, the E. C. A. of Ontario, have had their solicitors prepare a set of By-laws for the conduct of the affairs of its members, machinery for qualifying, examining, and 'registering' their members, and disciplinary procedure for dealing with those not complying with the By-laws. In addition to all of these requirements each member is bonded in the sum of \$2,000.00 to guarantee to the public that should any members install any work or materials not approved by the H. E. P. C. Inspection Department that the Association will have the defective work or material made good at no expense to the public.

. . . the Association have been proceeding with their plan for the past year to qualify and register contracting Master Electricians, and have set up the necessary machinery to examine and qualify everyone engaged in electrical installation work.

. . .

The 'Association' is now ready to operate along these lines and it is proposed that the City of Toronto and all other municipalities in the province, discard the present system of Municipal Licensing and substitute in its place the E. C. A. of Ontario Registration Plan.

. . .

It may be argued that such a plan would make it necessary for everyone engaged in the industry to become a member of E.C.A. to earn a livelihood whereas membership in an Association should be voluntary. We need only to point out the analogy of the Association of Professional Engineers of Ontario operating under the Engineers Act of 1937. This Association had tried for many years to secure recognition as the group best qualified to qualify, examine, and register those doing engineering work in the province, to conduct the affairs of their industry, and to apply disciplinary action when necessary.

It was 'necessary' at that time for 'all' desiring to conduct engineering work in the province to become registered in the Association, to earn a livelihood in this profession. There was no suggestion that it be voluntary, and no one would suggest today that they have done other than good in their industry."

(Exhibit 29, Serials 498-501,
at Serials 499-500)

After the amendment to the Municipal Act was passed the Association had a model registration By-law prepared and forwarded in July 1955 to every municipality in Ontario, with a covering letter asking them to consider the matter further. Mr. R. DeMers, President of the Association, in a letter to Zone officers, dated July 29, 1955 referred to an earlier "mailing" to municipalities, which, he said, had been very successful. He stated that several municipalities had passed a By-law giving E.C.A. the qualifying powers.

The model By-law contained the following clauses:

"2. No person shall within the limits of the municipality of (name) carry on or engage in the trade, calling, business or occupation of Electrical Contractor, Master Electrician or Journeyman Electrician until he shall have been 'Registered and Bonded' or 'Registered' as provided under the By-laws and Constitution of the Electrical Contractors Association of Ontario, and every person so 'Registered' shall be subject to this By-law.

3. (a) No 'Registered' Master Electrician shall conduct a business within the City of (name) under this By-law unless he has a regular place of business within the City of (name) and is a resident thereof, except as provided under section 4, and is of the full age of 21 years.

(b) In this section, a 'regular' place of business shall mean an office accessible to the public, which may be entered from the street, having displayed outside thereof a sign bearing the name or names of the person, in letters not less than 3" high, clearly designating that it is a Registered Master Electrician's shop, store or place of business."

(Exhibit 25, Serials 1020-22
at Serial 1021)

Mr. DeMers' letter contained the following paragraph:

" . . .

You hear contractors all over Ontario complaining about the carpet-baggers and part-time workers ruining our Industry. I'm sure that you [are] aware that to qualify as a Registered Master Electrician in our Association one has to earn his living from Electrical Contracting. Once the Legitimate contractors of Ontario realize the importance of this fact and back registration fully, their problems will be over, for these other people will not be able to qualify and pass our examining boards in accordance with our Constitution.

. . . "

(Exhibit 26, Serial 362)

It is clear from the language of this paragraph that Mr. DeMers regarded registration as a means of excluding part-time electricians from the electrical contracting business. This conclusion is strengthened by the next paragraph of the letter which read:

"We have the method in our hands to clean up our Industry this time. Will you help us by seeing that the members in your area know these facts."

The last paragraph of the letter read as follows:

"Please follow the procedure outlined to you recently for approaching your municipality, and let us know what happens."

(Exhibit 26, Serial 362)

We have seen that one of the purposes of the Supplier Relations Program was to prevent general contractors and others not "recognized" by the Association as electrical contractors from obtain-

ing equipment and materials at trade prices, so that such firms and persons would find it necessary to engage a "recognized" electrical contractor on all electrical contracts, for materials as well as labour. Reference was made to a complaint from Sarnia arising from Canadian General Electric Company having supplied a building contractor named Goroll at trade prices. That it was felt the Registration Plan would aid the Supplier Relations Program in this respect appears from the following two paragraphs of a letter dated August 25, 1955 from Mr. W. G. Booth, Secretary-Manager of the Association, to the President of Zone 34, in Sarnia, with reference to the C.G.E.-Goroll incident:

"From the many contacts I make at the many meetings I attend throughout Ontario, it has been my personal feeling that once the Electrical Contractors as [are] united many of our ills and problems will cease and while this does not solve the Sarnia problem, let us show all segments that we have elevated our status and then ask the Suppliers and Manufacturers fullest assistance for the promotion of the Electrical Industry as a whole.

One party can not do it himself and while our Plan of Registration is advancing by leaps and bounds and we can state we already have 550 registered masters representing approximately 65% of the purchasing of the contractor, we must not slaken [sic] but strengthen E.C.A. by an all out effort and gain the acceptance of municipalities so Registration is compulsory."

(Exhibit 25, Serials 1193-4,
at Serial 1194)

Other documents contain the same idea. An example is a letter from Mr. DeMers to Mr. Dalton, C.G.E. Manager at Windsor, dated September 15, 1955, in which the following paragraph appears:

"I am pleased to advise that our members were most appreciative of the verbal offer of your firm to sell to only qualified and registered electrical contractors in this area once they have succeeded in having the local municipal by-laws amended to make it mandatory for a contractor to be qualified and bonded and licensed, before he can operate. We naturally do not intend to complain about sales made to industrial concerns who operate within your company policy."

(Exhibit 25, Serial 1201)

From an examination of all the evidence available the Commission has formed a definite opinion that the Association regarded registration as applying to contractors (see for example, Clause 2 of the model By-law quoted above). It certainly applied to a Master Electrician, who by the same model By-law was required to have a regular place of business, and who was defined as one, "who, himself or by Journeymen electricians in his employ, performs electrical work". On this description a Master Electrician was not an employee, like a Journeyman, but was self-employed or an employer of others and was commonly, though not necessarily, a contractor. It is noted that Exhibit H-2 indicates that on December 31, 1957, no less than 626 out of a paid-up Association membership of 727, were listed as Registered Contractors and that out of 96 delinquent members, 82 were Registered Contractors. These member can only have been Master Electricians.

In the Commission's view also, the Association intended the Registration Plan to support the Supplier Relations Program, in cutting down competition from general contractors and others whose business was not "recognized" by the Association as that of an electrical contractor, and from part-time electrical workers who likewise were not recognized as electrical contractors.

It was clearly the Association's aim to make compulsory registration apply throughout the province, by persuading all municipalities to pass By-laws similar in this respect to the model By-law. The evidence indicates that at least some manufacturers might limit the supply of equipment and materials to such persons only as were qualified and Registered Electrical Contractors, if municipal By-laws required such registration and an authoritative list of such persons was thus made available.

To what extent has the compulsory Registration Plan succeeded? Up to the time of the inquiry its success in securing municipal support has been slight. As of July 2, 1957, when Mr. W. G. Booth's evidence was taken, it appears that only twelve Ontario municipalities had By-laws in effect that required registration with the Electrical Contractors Association of Ontario. None of the larger cities in the province had passed such a By-law. It is obvious that the great majority of those registered with the Association even at that date, more than two years after the amendment to the Municipal Act had been passed, were registered on a voluntary basis.

The Director regarded the bonding of Contractor Members of the Association as affording some assistance to the purposes of the Registration Plan. The model municipal By-law contained a requirement for bonding, as we have seen, and the By-laws passed by all but one of the twelve municipalities specifically require bonding. The twelfth municipality requires that a person doing electrical work be a

registered member of E.C.A., which would appear to have the same effect, since a Contractor Member of the Association must be bonded.

The purpose of bonding contractors is stated in By-laws and other documents as being, in effect, to guarantee good materials and workmanship and that the work is done in accordance with law. The Association arranges for bonding all its contractor members in the sum of \$2,000, as required by its By-laws, and includes the amount of the bond premium in the annual dues of contractor members. Clearly, if membership in the Association were the only means by which a contractor could become bonded, there would be some inducement to non-members to join the Association and thus be enabled to assure their customers of a guarantee against loss from faulty materials or workmanship. However, there seems no reason to doubt that non-member contractors could obtain a bond from other sources, and in any event, in 1956 the Association made arrangements for the bonding of non-members. This appears from the minutes of a Board of Directors' meeting on September 16 and 17, 1956:

"Individual Bonding

Mr. Booth quoted a premium of \$12.50 for a \$2,000. individual bond for non-members, furnished by Regent Insurance Agency. This information had been obtained due to difficulty encountered in several municipalities where the question had been raised whether membership was mandatory. He stated that we could now say that membership is not mandatory and individual bonding is obtainable through E.C.A.

Mr. DeMers moved that the Association provide individual bonding for those persons not wishing to become members, in centres where By-laws make Registration mandatory. Seconded by Mr. Leutwein. Carried."

(Exhibit 25, Serials 1091-2)

In the light of these facts the Commission does not regard the bonding policy of the Association as having much significance to this inquiry.

In so far as the practical application of the Registration Plan for the purpose of restricting entry into the industry is concerned, only one case is cited in the Statement of Evidence. It concerns Vincent & Co., Inc., a Montreal company having a branch office in Toronto. In September 1956 this company sought membership in the Association through Zone 20, but was turned down on the ground that it was a general contractor. In advising the company to this effect, Mr. K. H. Smith, Manager of Zone 20, stated that if they wished to pursue the matter further they should furnish particulars to Mr. W. G.

Booth, Secretary-Manager of the Association. This was done and the Association accepted Vincent & Co.'s application for membership, apparently because Mr. Booth, who stated that he did not remember any discussion with Mr. K. H. Smith, had concluded that while the company was in part a general contractor it was also an electrical contractor. As nearly as Mr. Booth could remember, admission to membership occurred in the latter part of 1956 or early in 1957. The reference to registration occurs in the evidence of Mr. Booth. He stated that in discussing the matter with Mr. H. B. Valiquette, Electrical Superintendent of Vincent & Co. he had been told the company had been doing electrical contracting in Pembroke, Cornwall, and in the Toronto area. He was questioned further:

"Q. Did Mr. Valiquette indicate to you why he was seeking admission to the Association?

A. Well, there were some centres that had passed a by-law requesting registration as the standard of qualification for those making electrical installations in that centre. If he were to work in various centres, in that they had passed this standard of qualification, and had enacted the by-law, it necessitated him holding membership in the Association -- which has since been granted."

(Evidence, pp. 137-8)

The towns of Pembroke and Cornwall, and the Township of Cornwall are three of the municipalities which have enacted By-laws requiring registration with the E.C.A., but none of them require membership in that Association.

The answer of Mr. Booth, quoted above, is the only evidence in any way relating Vincent & Co.'s application for membership to registration. This evidence is of very little weight, since membership in the Association is not a condition of registration under the By-laws of any of the municipalities mentioned (Toronto has no registration By-law). Further, Mr. Booth did not say that Mr. Valiquette gave him the above or any reason for desiring membership. From the quoted answer of Mr. Booth, the reason given may well have been his own opinion rather than a statement of Mr. Valiquette.

3. Business Practices

The last of the activities of the Association described in the Statement of Evidence is given the heading "Business Practices". The evidence cited is not extensive and is certainly incomplete.

Since at least 1953 the Association has had a standing committee on Business Practices. The first evidence of the Committee's work is found in a report made by its Chairman, Mr. Gordon K. Brown, to the Annual Meeting of the Association in April 1953, which contains a proposal to set up an "Estimating Manual" for the Association, for the trade in the Province (Exhibit 25, Serial 911).

The report says nothing about the purpose of the Manual and gives no details concerning its contents. Nor is there any evidence that the proposal was approved.

In the minutes of the Executive Meeting of the Association on June 14th, 1953, there is recorded a recommendation that the Business Practices Committee "arrange further Schools of Instruction for a wider area than presented last year with emphasis on Estimating and sound Business Administration" (Exhibit 25, Serial 922).

In Mr. C. C. Pollard's five-page "program for licensing" which was referred to in our discussion of the Association's Registration Program, and which was presented to the Executive the day before its June 14th, 1953 meeting, there is embedded in one of the paragraphs this statement:

" . . . The Electrical Contractors, as well, should set up a proper accounting, purchasing and pricing system for its members, so that each and every one will have the same opportunity as the other members of the Electrical Contractors' Association. This pricing system can be obtained with the co-operation of the National Electrical Contractors' Association of America, both in pricing of materials and the unit structure for installing all types of electrical work. . . ."

(Exhibit 25, Serial 1129)

Again, there is no evidence that this proposal was adopted or that anything was done at that time pursuant to it.

The next document referred to in the Statement of Evidence is dated nearly two years later, March 31, 1955, and is a letter from Mr. C. W. Dent, then First Vice-President of the Association, to Mr. Hugh Gilmore, Chairman of the Public Relations and Business Practices Committee of the Association. The first two paragraphs of the letter read as follows:

"Further to your telephone call with reference to the estimating manual prepared by Gordon Brown that you consider may well be adopted by E.C.A. for distribution to members desiring an estimating manual, I agree that we

should have such a manual, but I would like to see a copy and give it some study between now and the Directors meeting on April 18, so that we could talk about it on this occasion.

I understand that the C.E.C.A. committee also have done some work along this line and we would not want to make any hurried decision along this line before we get all the facts to consider."

(Exhibit 26, Serials 360-1,
at Serial 360)

The minutes of the Directors' meeting of April 18, 1955 state that an "Estimating Sheet (submitted by Mr. Gordon Brown, Oakville)" was displayed by Mr. Gilmore, but once again there is no mention of discussion or of any disposition of the matter (Exhibit 44, pages 5-6).

We next hear of the matter on May 8, 1956, when Mr. C. W. Dent raised it at a General Meeting of Zone 20, the minutes of which record that, "Mr. Dent read to the meeting a paper on bidding at cost or less which is prevalent throughout the construction industry." On Mr. Dent's motion a committee was named "to formulate and recommend a code of ethics, business practice, administrative methods and aids to business, etc., to be forwarded from time to time to our members" (Exhibit 41, page 24).

On May 18, 1956, Mr. Dent, as President of the Association wrote Mr. K. H. Smith. This letter is the first evidence containing any specific pricing proposals. It reads as follows:

"As the basis of discussion for the committee on good business practises, it is suggested that the following be considered as the basis of a recommendation to our members and others who may be concerned.

1. That we all decide as of June 1st, 1956 to discard the wasteful practise of bidding without a realistic mark up for overhead and profit,
2. That we agree to start on this date to bid on work on the following basis -
 - (a) Arrive as nearly as possible at a true prime cost of the job,
 - (b) Further to par. (a) all direct job costs

should be included in the prime cost. (direct job costs to be defined)

(c) That a realistic labour factor of say 10% minimum should be included in the prime cost. (the various considerations effecting the labour factor should be defined)

(d) That confidential or special discounts shall not be used in arriving at the prime cost as these should not be handed to the purchaser,

(e) That a realistic overhead should be added to the prime cost - an average figure of say 15% should be proposed,

(f) That a reasonable profit should be added to the combined prime cost and overhead - propose 15% on jobs up to \$5,000.00, 10% on jobs \$5,000.00 to \$20,000.00 and 5% on all jobs above this.

(g) A labour surcharge percentage should be agreed upon to be added to labour costs to include;

P. L. and P.D. Insurance	2%
Workmen's Compensation	2%
Vacation with pay	4%
Unemployment Insurance	2%
Tool replacements	2%
	<u>12%</u>

This should not be classed as overhead.

I feel that, if the committee can agree on a recommended policy, that we should then use every reasonable means to get members to adopt it before the summer recess. I propose that another date be set this coming week to organize this committee, and appoint a chairman. I nominate John MacDonald [sic] for the reasons explained to you to-day."

(Exhibit 29, Serial 717-8)

From Exhibit 29, Serial 715, it appears that a copy of Mr. Dent's letter was forwarded to each of the members of the new Business Practices Committee of the Zone on May 18, 1956. There is however, no evidence that his proposals were ever accepted or acted upon, or even that they were ever discussed at any meeting.

Mr. H. John McDonald stated in evidence that he became Chairman of the Zone Committee in June 1956, and Chairman of the corresponding committee for the whole Association in April 1957

(Evidence, pp. 243-4). On June 12, 1956 he reported to the monthly meeting of Zone 20 that the Committee was functioning, that the first bulletin should be ready for distribution in a couple of weeks, and that further information would be forthcoming from time to time (Exhibit 41, page 21).

In oral evidence Mr. McDonald was questioned as to the work of the committee. He replied:

"A. Well, to date, we have prepared and distributed some six bulletins dealing with -- well, it is an educational program we are trying to institute, actually.

We have dealt with, firstly, direct job costs, and then went on to overhead, items of overhead, and so on, with the hope that over the next year or so each contractor will be preparing his estimates along the same line, and recognizing that certain costs do exist. There are those of us who do not do that at this time."

(Evidence, p. 250)

The first of the Committee's bulletins is the only one in evidence. The first two paragraphs are as follows:

"THE PURPOSE OF THE BUSINESS PRACTICES COMMITTEE

We cannot help but feel that the time has arrived when our industry must pause and take stock of just what is being accomplished by today's low bid prices. Certainly, with the volume of work that is being undertaken and is to be undertaken, it is not necessary to completely eliminate the profit factor from our operations in order to obtain work.

The members of the Business Practices Committee feel that through a comprehensive study of administration, overhead and direct job costs a level of common ground may be found for all contractors, which will ensure that a proper mark-up is applied to estimates for overhead and profit, and result in a greater return for the contractor. This then is the aim of the Business Practices Committee."

(Exhibit 27, Serial 1462)

The bulletin then sets out what it says is the only basic method of satisfactorily estimating the cost of electrical construction work. It includes in what it calls "Prime Costs", the net cost of materials, the net cost of labour, and other direct costs, but describes these other direct costs only in a general way. It then calls for the addition of "a proper percentage" to cover overhead in order to obtain the total cost, and the addition of "a desired percentage of profit to the total cost to determine the total selling price."

The only evidence concerning the contents of later bulletins is found in a letter dated July 17, 1956 from Mr. McDonald to Mr. K. H. Smith, which stated that bulletins #1 and #2 of a series dealing with Administration, Overhead and Direct Job Costs were enclosed. With regard to other bulletins it said:

"Tentatively the subsequent bulletins would deal with:

#3 - Items of Direct Job Expense.

4 - Recommended Percentages to be Added to cover
Items listed in Bulletin #3.

5 - General Discussion of Overhead.

6 - Items of Overhead

7 - Recommended percentages to be added to Prime
Costs to cover overhead for given sizes of jobs."

(Exhibit 28, Serial 899)

We have no evidence of the actual contents of any bulletin other than #1.

In all the evidence available to the Commission there is nothing to indicate that the matter ever got beyond the point of discussion and the distribution of information. Some persons in the Association may have expected that the work of the Business Practices Committee would result in a manual setting out specific amounts or percentages to be added to materials and labour costs for such items as "other direct costs", "overhead", and "profit", and in an understanding or agreement that the members would adhere to such amounts or percentages. There is however, no evidence that the Association or its members ever approved anything of the sort. In the Commission's opinion, the evidence is quite consistent with Mr. H. J. McDonald's statement that "it is an educational program we are trying to institute." No doubt it was expected that the series of bulletins would enable many electrical contractors to estimate their actual costs more

accurately than formerly, and that low bids which some thought had hitherto been made on the basis of partial ignorance of real costs would be eliminated in future. On the evidence it cannot be assumed that the Association as a whole or its Zone 20 members as a group intended to go further than that. It cannot be said that even that objective had been reached at the date of the inquiry. That some members of the Association were interested in attempting to secure a commonly-accepted basis of pricing is made clear by the evidence reviewed in this section. Any development in this direction would, of course, raise immediate question as to the likelihood of detrimental effect on the public interest.

CHAPTER IV

FURTHER REVIEW OF EVIDENCE AND ARGUMENT

At the hearing before the Commission, counsel for the Association and the individual persons against whom allegations were made in the Statement of Evidence submitted that the Director had completely misinterpreted Section 411 of the Criminal Code, S.C. 1953-54, c. 51, and contended, in effect, that to a very large extent the business of electrical contracting did not come within the terms of that section. Section 411 reads as follows:

"411. (1) Every one who conspires, combines, agrees or arranges with another person

- (a) to limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article,
- (b) to restrain or injure trade or commerce in relation to any article,
- (c) to prevent, limit or lessen, unduly, the manufacture or production of an article, or to enhance unreasonably the price thereof, or
- (d) to prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, transportation or supply of an article, or in the price of insurance upon persons or property,

is guilty of an indictable offence and is liable to imprisonment for two years.

(2) For the purposes of this section 'article' means an article or commodity that may be a subject of trade or commerce.

(3) This section does not apply to combinations of workmen or employees for their own reasonable protection as workmen or employees."

Counsel's argument was based largely on the exemption given by subsection (3) to combinations of workmen or employees. He submitted that the electrical contractors, apart from those that were incorporated companies, were workmen within the meaning of that word in subsection (3). Their business was performing a service as workmen rather than supplying articles or commodities as a dealer. As such they were exempt from liability for any combination among themselves for their own reasonable protection as workmen. Therefore a combination of electrical contractors, in their capacity as workmen, to lessen competition for electrical jobs would be outside the offence created by Section 411 and completely legal.

Counsel agreed that in respect of allegations made against them as employers, or as suppliers, this argument had no application, but he contended that most of the Director's allegations were not concerned with the supply of electrical materials and equipment, but with registration and other matters which affected the members as workmen, not as suppliers.

The Commission does not see much force in this argument. The whole Supplier Relations Program was aimed at securing for the electrical contractor, as nearly as possible, and permitting certain specific exceptions, the exclusive right to supply the materials and equipment used on contracts performed by him. Similarly, one of the grounds on which the collective agreement with the I.B.E.W. was attacked was that Clause 3(b) of that agreement had been amended at the request of the Labour Relations Committee of Zone 20 for the purpose of making the Supplier Relations Program more effective. In fact all of the allegations contained in paragraphs 3 and 5 of the Statement of Evidence and quoted in Chapter I of this report, are concerned with the purchase, sale and supply of articles or commodities, electrical construction materials and equipment.

Certainly the electrical contractors have not regarded themselves simply as workmen. The evidence is quite clear that they wished to be the sole suppliers of materials and equipment on their own contracts in order that their business might become more profitable. Obviously they regarded the supplying of these things as a profitable and important part of their business.

A second argument on which counsel laid much stress, and which was in part related to the first, was that it is wrong to assume that the total cost to the consumer is higher, where the contractor supplies the materials as well as the labour, than where the contractor supplies the labour and the consumer obtains the materials from some other source, e.g., the manufacturer or a jobber or wholesaler. He contended, as had been stated in evidence by Mr. F. J. Dahmer (Evidence, p. 239) and Mr. H. J. McDonald (Evidence, p. 251), that the cost of doing a job is the same, whether the contractor supplies the materials or not. In addition to all costs connected with labour, he

must be paid for his overhead and a reasonable profit. If he cannot obtain part of his overhead and profit from a mark-up on materials he must get all of it from his charge for labour. Consequently, on a "labour only" contract, he charges more for labour than he would charge if he were supplying both materials and labour, and the customer is no better off. In fact he may be worse off, because of wastage or delay. For example, the customer may order more wire than is required for his particular job and have some wire left over, for which he has no use but for which he has paid. Where the contractor supplies the materials any surplus may be used on another job. Again, he is not in as good a position as the contractor to see that all the necessary materials are on hand just when the contractor is ready to use them. This may cause delay in one instance and storage in another, with extra costs in both.

In support of this argument counsel filed Exhibit H-1, which consists of a letter dated February 24, 1956 addressed to Mr. C. W. Dent and signed by George B. Roscoe, Director of Public Relations of the National Electrical Contractors Association of the United States, together with six pages from a Research Manual of that Association. The exhibit lists many ways in which both labour costs and material costs may be increased where the contractor does not supply the materials, as compared with cases where he supplies everything required to complete the contract. On one page are estimated breakdowns of costs for a "labour only" contract and a "labour and materials" contract where the base labour costs are \$12,000 and the cost of materials \$18,000. These breakdowns estimate that when the extra costs occasioned to the contractor under the "labour only" contract have been allowed for, as against a 5 per cent mark-up allowed him on materials in the "labour and materials" contract, the "labour only" contract costs the customer some \$2,483 more than the "labour and materials" contract.

The Commission appreciates that there are many cases in which a contractor who supplies the materials is able to operate more efficiently than would be the case if the materials were being obtained and delivered by others, and in which, therefore, he can effect savings. There is no further evidence before us, and it is reasonable to assume that while in some circumstances the savings might be substantial, in others they might well be insignificant or even non-existent. The Commission cannot give much weight to Exhibit H-1 as evidence. This exhibit was prepared in the United States, not in Canada, by an interested party, apparently for public relations purposes, and was presumably based on American experience. It consists partly of argument, is not sworn to and was not subject to cross-examination. The amounts and percentages used are all estimates and no reason is given for the use of any of them rather than of some other figure.

As against this evidence and the statements of Mr. Dahmer and Mr. McDonald that the costs of a job to the contractor are the same, whether he supplies the materials or not, we have the evidence of Mr. H. L. Somerville in the Orenda Engines Limited case, quoted when dealing with that case in Chapter III, that it was his company's practice, where possible, to purchase equipment of the type involved (in that case transformers) from the manufacturer, rather than to have it supplied by the electrical contractor, on the ground that ". . . there is usually better delivery and a better price" (Evidence, p. 58). We have also the actual experience of one or two instances in which it seems quite clear that the application of the Supplier Relations Program resulted in higher costs to the owner of the premises or an enforced rebate from the manufacturer.

On the evidence submitted the Commission is of the opinion that in many cases the successful application of the Supplier Relations Program would lead to higher total costs to the customer by reason of higher prices for materials and equipment.

Part of counsel's argument in respect of higher costs was related to his argument that electrical contracting is a service industry. It was his contention that if the Association sought to exclude general contractors and others not "recognized" as electrical contractors not only from membership in the Association, but also from participating in the industry, e.g., by the use of Clause 3(c) of the Union agreement, or by the Registration Plan, and if higher costs resulted from such activities, the Association would be acting as a combination of "workmen" and would be protected by the exemption in Section 411(3) of the Criminal Code and by Section 4 of the Combines Investigation Act, which is to the same effect.

The Commission is of the opinion that the exemption given to "combinations of workmen or employees" by Section 411(3) of the Criminal Code and Section 4 of the Combines Investigation Act does not extend to electrical contractors, even though many of them do in fact work as electricians on their installations, and though in performing small contracts they may have no employees. In addition to the service aspect of the industry, they supply equipment and materials, sometimes of very high value, on which they charge a mark-up, and on all large contracts it is necessary for them to have employees. Even if it were held that the exemption applied to persons who take contracts to perform work it would not apply to a contract to supply materials or equipment. Since commonly, though not always, electrical contracts include the supply of all or some of the required materials and equipment it is our opinion that electrical contractors cannot be regarded as workmen within the meaning intended by that word in the above statutory provisions.

Earlier in this report reference was made to the relationship of a Zone, particularly Zone 20, to the Association, and to counsel's contention that the Zones were local autonomous groups, that most of the activities complained of were activities confined to Zone 20, its officers and members, and that the Association as a whole could not be held responsible for the actions of a single Zone. We have seen that the Zones were not so much autonomous as subordinate groups, formed expressly to carry out the objects of the Association and that membership of a Zone apart from membership in the Association was not possible under the By-laws.

Many of the activities recited in Chapter III arose in Zone 20 and were dealt with by meetings of the Zone or by its officers. However, it is clear that in all cases the Association's most active officer, Mr. C. W. Dent, was fully informed of problems that had arisen and that he not only supported but sometimes proposed the course of action that was taken. Other officers and committee chairmen of the Association were also active in some of the activities in Zone 20. Again there are a number of references in the documentary evidence from Zone 20 to a proposed action as being Association policy. There is no evidence that the Association ever objected to any Zone 20 activity on the ground that it was in conflict with the objects or policy of the Association. In view of these facts, together with the clear express terms of the Association's Constitution and By-laws and of the By-laws of Zone 20, the Commission holds that in the several matters in which activities were confined to Zone 20, the officers and members taking part in those activities were endeavouring to further the purposes of the Association and carry out its policies. The full knowledge of these activities and the active participation therein of Mr. Dent and other leading Association personnel indicate that they were accepted and approved by the Association. In our opinion, therefore, no distinction can be drawn between the Association and Zone 20 for the purposes of this inquiry.

Counsel for the Association submitted that the Association has no control over the electrical contracting trade. The membership of the Association comprises between one-third and one-half of the electrical contractors in Ontario, and the Association has no control over its members, other than the power of suggestion. There are no penalties for not adhering to any policy or program of the Association. Therefore, it was argued, manufacturers, jobbers and customers would have no difficulty in finding contractors outside the Association or even among its members, who would not be affected by any arrangements or policies of the Association, or would depart from them. Thus a boycott could not be effective. Further there is no evidence of lessening of competition. Let us examine this argument in the light of the evidence.

In so far as Association membership is concerned, we saw, at the end of Chapter II, how membership has grown over the years from something over 400 early in 1955 (Exhibit 29, Serial 500) to 817 on January 1, 1957 (Exhibit 31). The same documents show that in Zone 20, the Toronto area, the membership has grown in that period from 80 to 111. There is no exact evidence as to the total number of electrical contractors in Ontario or in Zone 20, but Mr. Dent's estimate in Exhibit 31 of 1,800 in Ontario would appear to be sufficiently accurate for our purposes. From other evidence by Mr. Dent and from an examination of the number of electrical contractors listed in the Toronto telephone directory, the number in the Toronto area would appear to exceed 300. On the basis of these figures the Association membership would comprise about one-third of the contractors in the Toronto area and substantially less than half of all the contractors in Ontario.

Numbers alone do not give a true picture of the degree of influence in the industry that might be enjoyed by the Association. Several documents indicate that the share of the total market held by members of the Association is much greater than half. One example is the letter written by Mr. C. W. Dent to the City of Toronto on February 1, 1955 urging the adoption of the Association's Registration Plan, which letter was referred to in Chapter III, in discussing the Registration Plan, and which contains this paragraph:

"We now have over 400 of the leading contracting master electricians registered and bonded in the province and 80 in Toronto, which represents over 60% of the electrical installation work being done at present."

(Exhibit 29, Serials 498-501, at Serial
500)

Another instance is found in the letter of August 25, 1955, from Mr. W. G. Booth to the President of Zone 34, at Sarnia, also referred to in discussing the Registration Plan, and which contains the following paragraph:

"One party can not do it himself and while our Plan of Registration is advancing by leaps and bounds and we can state we already have 550 registered masters representing approximately 65% of the purchasing of the contractor, we must not slaken [sic] but strengthen E.C.A. by an all out effort and gain the acceptance of municipalities so Registration is compulsory."

(Exhibit 25, Serials 1193-4, at Serial
1194)

A third example is the following statement in a memorandum, dated July 11, 1956, prepared by Mr. C. W. Dent apparently for discussion in connection with a meeting with the Ontario Council of the International Brotherhood of Electrical Workers:

"The membership of E.C.A. is now over the 600 mark, which represents the large majority of Electrical Contractors engaged in heavy construction work, with the possible exception of Windsor at present. . . ."

(Exhibit 26, Serial 434)

Finally, a letter from Mr. C.W. Dent to the Chairman of the Licensing Commission of Metropolitan Toronto, dated September 21, 1956, and setting forth the merits of the Registration Plan, contains the following paragraph:

"2. There are 725 of the leading Electrical Contractors in the province and 106 of these are in Toronto, who are members in good standing and support our petition. The 106 members in Metropolitan Toronto do well over 85% of the Electrical Construction work."

(Exhibit 26, Serial 455-6, at Serial 455)

The matter of union shops has some significance in this connection. We saw, in Chapter III, that in a letter (Exhibit 26, Serial 463), dated October 1, 1956, Mr. C. W. Dent gave the number of union shops in Toronto at that date as 74. We also saw that under date August 10, 1956, Mr. K. H. Smith, in writing to union shops in the Toronto area that were not members of the Association, stated that all but ten of the union shops in Metropolitan Toronto were members and that two of the ten were pledged to membership though not actually enrolled (Exhibit 29, Serial 806).

Even after making allowance for the optimism and exaggeration often associated with promotional activity, the Commission has concluded that these statements clearly prove a much greater share of the market is enjoyed by Association members than the ratio of members to non-members would suggest.

The facts that the Association exercises no power of discipline over its members and that there is no provision for penalties for non-adherence to Association policies do not in themselves mean that the Association has no control over the industry or that any agreement would be ineffective. The significant questions are whether

or not the Association members, generally speaking, do in fact support and adhere to Association policies, whether or not the Association or its spokesmen in Zone 20 have secured the compliance of the I.B.E.W. with Clauses 3(b) and 3(c) of the Union agreement, whether or not the Association's members affected by the Union agreement themselves support those clauses, whether or not electrical manufacturers and jobbers support Association policies, and whether or not manufacturers, jobbers, customers, and persons or firms not "recognized" as electrical contractors, find their business prejudiced or their costs increased by the application of Association policies. To all of these questions the evidence disclosed in this report, particularly in Chapter III, leads the Commission to give at least a partial affirmative answer.

With regard to the effectiveness of the Supplier Relations Program the Statement of Evidence quotes several further general statements, which support the foregoing conclusion. Thus, attached to a draft notice of a monthly dinner meeting of Zone 20 (Exhibit 29, Serial 862), called for November 13, 1956, there is a draft memorandum for the meeting, presumably prepared by Mr. K. H. Smith, whose typewritten signature is at the end of the notice, which memorandum contains this statement:

"The matter of supplier relations, a field in which Electrical Contractors are already reaping substantial rewards in hard cash because of Association effort will come before the meeting".

(Exhibit 29, Serials 863-4, at Serial 864)

Again, the minutes of a Zone 20 meeting on December 11, 1956 record the following:

"Don Brown, speaking for Supplier Relations Committee assumed that the situation must be considerably improved because complaints being brought to his attention have dwindled to a trickle. . . ."

(Exhibit 41, Serial 11)

Two statements attributed to Mr. C. W. Dent are also quoted, bearing particularly on the support the Association has been able to secure from manufacturers and distributors for the Supplier Relations Program. Mr. Dent was not examined on these statements, but they would appear to represent his opinion of the situation. They are taken from the April and October 1957 issues of the trade publication "Electrical Contractor of Canada". In the April issue at page 41 Mr. Dent is reported to have made the following statement

concerning the Annual Meeting of the Association at Kingston, Ontario, on March 28-30, 1957:

"Delegates felt that good work was done in relation to the bid depository, the supplier relations scheme, and adequate wiring. There was remarkable support from the supplier-manufacturer groups and this is especially impressive when you consider that the plan only got on the road in August. Ninety per cent of the manufacturers and distributors supported the policy and the other ten per cent will be approached again. . . ."

In the October issue there is an article by Mr. Dent entitled, "How a Contractor Sees the Future of the Electrical Distributor". The article contains, at page 58, this paragraph with reference to the Supplier Relations Policy:

"It is with gratification that we note the long strides that have been made during this time toward support of the policy, by the majority of the distributors and manufacturers of electric wiring materials. By far the large majority of the suppliers are making an honest attempt to make it workable and likewise the large majority of the member contractors are adopting the association policy and using it in their everyday activities."

One further argument of counsel for the Association requires consideration at this point. He submitted that it is in the public interest that there should be an electrical contractors association, doing exactly what the Electrical Contractors Association of Ontario is doing. He pointed out that the Association and its members promote apprenticeship and training of men for electrical work, that the examination and subsequent registration of men in the categories for which they were shown to be qualified were clearly in the public interest, and that uniform municipal By-laws throughout the province establishing similar qualifications for registration, were better from the public interest point of view than many varying By-laws for licensing or registration. He then urged that the real effort of the Association has been to see that electrical work is done by qualified persons, not by part-time workers without the necessary qualifications.

If the activities of the Association were confined to those just mentioned, the Commission would agree that its efforts have not been restrictive of competition and that the general effects might be considered beneficial rather than detrimental to the public interest, although it might appear that in the particular field such supervision

might be exercised more appropriately through public rather than private agencies. As we have seen, however, the activities of the Association went much further.

The argument proceeded to urge that apart from some instances affecting general contractors, there was no evidence of any duly qualified person being prevented from becoming a member of the Association, and that an association of electrical contractors was perfectly entitled to exclude general contractors from membership. Without quarrelling with this contention, it must be noted that the Director's real complaint is not against the refusal of membership as such to general contractors, but against the efforts of the Association, by means of the Supplier Relations Program, aided by the Union agreement where applicable, and by the Registration Plan, to prevent general contractors from engaging in the electrical contracting business, including the supplying of electrical equipment and materials.

The objections to general contractors raised on behalf of the Association and its members were not based on protection of the public against inferior materials or faulty workmanship, but solely on the ground that they were general contractors, not electrical contractors. Similarly, in the specific instances where complaints were made against materials being sold at trade prices to persons who took electrical contracts on a part-time basis, the complaints were not that the individuals concerned were incompetent but that they were not full-time electrical contractors.

CHAPTER V

CONCLUSIONS AND RECOMMENDATIONS

This report has reviewed certain policies of the Electrical Contractors Association of Ontario and activities of the Association, its officers, directors, committees and members in endeavouring to give effect to these policies. The policies may be stated briefly, as follows:

1. That the electrical contractor should be the supplier of the materials and equipment required to carry out any contract undertaken by him, with certain specific exceptions. If, in any particular case not coming within these exceptions, he is not the supplier, he should receive a commission or allowance to compensate him for the profit he would have made by way of mark-up on the price of the materials and equipment, if they had been supplied by him.

2. That general contractors, and others not regarded by the Association as being properly classified as electrical contractors, should not be in the electrical contracting field. Similarly, part-time electrical workers who do not maintain a regular place of business and do not regularly earn their living from electrical contracting should not be in the field.

During the period under review in the inquiry the membership of the Association has steadily increased, as has the estimated share of the total market enjoyed by the members. Both by reason of the number of its members relative to the total number of contractors in Toronto and in the whole of Ontario, and by reason of the substantially larger proportion of electrical contract business enjoyed by its members in Toronto and in Ontario, it is clear that the Association represents a very substantial share of the industry in the province. If the Association's continuous effort to increase its membership should meet with continuing success, its position in the industry would likewise improve. On the other hand, the large number shown by Exhibit 31 to have dropped out of the Association, or at least allowed their dues to fall into arrears, suggests not all electrical contractors are willing to support it.

The policy relating to the supply of materials and equipment has been pursued by means of the Association's Supplier Relations Program, with assistance from an implied threat of a joint boycott against manufacturers and jobbers who did not conform to the policy. No actual cases of boycott have been alleged, but the possibility of it seems to have had some effect. The policy has also been assisted in

the Toronto area by Clause 3(b) of the Collective Bargaining Agreement with the International Brotherhood of Electrical Workers, inserted at the request of the Labour Relations Committee of Zone 20 of the Association.

Among its own members support for the policy has been sought, they being urged not to tender on or accept contracts for which materials and/or equipment were to be supplied by others, or alternatively to set their price at a level which would include their normal mark-up on the things not supplied by them.

In our opinion, one of the purposes of the Registration Plan was to assist the Supplier Relations Program. An authoritative list of electrical contractors, i.e., those who had been registered under the Association's By-laws, would, as some evidence indicates, strengthen the Association's hand in asking manufacturers and suppliers to sell only to electrical contractors at trade prices.

The evidence does not suggest that the policy has been applied universally or with unvarying success. Mr. C. W. Dent's reported estimate of support for the policy from 90 per cent of the electrical manufacturers and distributors, as contained in the April 1957 issue of "Electrical Contractor of Canada", may be highly optimistic, but taken in conjunction with other evidence cited near the end of Chapter IV, it indicates a very substantial measure of support from suppliers. In a few instances specific detriment in the form of higher costs to the customer or to a general contractor, resulted from the application of the policy.

In so far as the policy has met with success it has restricted competition in the supply and sale of electrical equipment and materials, by requiring such supply and sale to be made through the electrical contractor rather than directly to the consumer. In our opinion this restriction has led to cases of specific detriment to members of the public. The likelihood is clear, that if membership in the Association increases and the policy is more fully supported by its members, the consequent increasing control of the trade and restriction on competition will lead to greater public detriment. There is nothing objectionable in electrical contractors endeavouring to persuade their customers that it is advantageous to the customer to have all materials and equipment supplied by the contractor. The interference with competition and public detriment result from joint action designed, in effect, to force this policy upon the customer.

The policy relating to general contractors and others not regarded as electrical contractors has been pursued partly by endeavouring to persuade electrical manufacturers and jobbers not to grant trade or wholesale prices to such firms or persons, but only to

electrical contractors, with certain specific exceptions. It has also been assisted in the Toronto area by Clauses 3(b) and 3(c) of the Collective Bargaining Agreement with the I.B.E.W. In two particular cases described in Chapter III, Clause 3(c) of this agreement had the effect of forcing a general contractor either to refrain from bidding on a contract or to sublet the electrical work to a "recognized" electrical contractor. In these cases they were effectively excluded from competing in the electrical contracting industry.

In addition, in our opinion, the Registration Plan was expected to assist the efforts of the Association to curtail competition from general contractors. However, down to the time of the inquiry, the Registration Plan had met with very limited success. No convincing evidence has been adduced to us concerning its application to any particular general contractor or to any specific contract.

In so far as part-time electrical workers are concerned the Registration Plan was expected to reduce competition from this source but we have no evidence concerning its success or failure in this direction.

The fact that the Registration Plan has had very limited success down to the date of the inquiry might be taken as indicating that the restrictive effects on competition, which have been part of its objective, are not likely to be brought about in any substantial measure. This may be so, but it should be kept in mind that the provincial legislation authorizing municipalities to pass By-laws to accept registration with the Association as necessary qualification did not come into effect until March 31, 1955 and that the present inquiry was begun within two years of that date. To the extent that the Association is able to secure the adoption of its policies in the municipalities which have accepted Association registration the likelihood of restrictive effects on competition will be increased. Further, other municipalities may be persuaded to fall in line and the possibility of more significant limitations on competition in the electrical contracting field would become greater if many more municipalities, and particularly the large cities, were to adopt registration By-laws in the same terms as the Association's model By-law for municipalities.

In summary, the Association's efforts to make its policies effective had achieved very limited success as at the date of this inquiry, and it may be that the inquiry itself has had the effect of retarding the development of those efforts. In our view, however, the inquiry has disclosed a situation involving elements of public detriment that should not be permitted to continue. The Association performs functions useful to its members and beneficial to the public, and we think the situation can be remedied without interfering with these useful functions. We therefore do not recommend the winding up of

the Association, but we do recommend that the following changes in its activities be required:

1. The Supplier Relations Program should be abandoned.
2. The Collective Bargaining Agreement made by union shop contractors with the International Brotherhood of Electrical Workers should be amended in a manner that will prevent it being used to further the purpose of the Supplier Relations Program or to restrict entry into the electrical contracting industry.
3. Efforts to restrict entry of competent persons or firms into the electrical contracting industry should be abandoned.
4. The Compulsory Registration Plan or any activity directed toward similar ends should be confined to matters connected with technical qualifications, under appropriate public safeguards.

If necessary to secure adherence to these recommendations we further recommend that an application be made to a court of competent jurisdiction for an injunctive order to this effect.

The Commission considers it unnecessary to make any finding in respect of the individual persons who are described in the Statement of Evidence as having been principally concerned in devising and carrying out, on behalf of the Association, the activities alleged in the Statement.

(Sgd.) C. R. Smith

Chairman

(Sgd.) A. S. Whiteley

Member

Ottawa,
May 1, 1959.

